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Genocide Prevention through Changing the United Nations Security Council Power of Veto

A thesis
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Abstract

In 1948 the international community in reaction to the horrors of the holocaust sought to eradicate genocide forever by creating the ‘Convention on the Prevention and Punishment of the Crime of Genocide’. This Convention criminalised the preparation and act of genocide by international law, making all individuals accountable irrelevant of status or sovereignty. But the Convention has not been enough to deter the act of genocide from occurring again, and again, and again. Worst, the international community has been slow to react to cases of genocide. The problem with preventing and punishing genocide is hindered by the power and right of veto held by permanent members of the UNSC. The UNSC has been given the responsibility to maintain international peace and security and is the only entity that can mandate an intervention that overrides the principle of non-intervention. The aim of this thesis is to show that the veto has been a crucial factor in stopping the prevention of genocide, thus it is imperative that the veto change. This study argues that to effectively prevent and punish genocide the veto needs to be barred from use in cases of genocide. It looks at different cases since the Armenian genocide during WWI through to the Darfur genocide which is still in process. The case of Armenia is significant because for the first time, members of the international community were prepared to hold leaders of another state accountable for their treatment of their own citizens. However the collective will to bring justice to those accountable waned coming to an abrupt end in 1923. The holocaust followed in WWII; six million Jews died, and numerous other groups were targeted under the Nazi’s serial genocide. The shock of the holocaust led to the Genocide Convention. But thirty

years later during the Cold War, Cambodia became embroiled in a genocide perpetrated by the Khmer Rouge. The international community silently stood by. The USSR, China, and the US all had their reasons to stay out of Cambodia, from supporting a regime with a likeminded political ideology to war weariness from Vietnam. In the 1990s, genocides in Rwanda and the former Yugoslavia (Bosnia and Kosovo) followed. The former was neglected by the US's unwillingness to be involved in another peacekeeping disaster. The two genocides in the former Yugoslavia were affected by Russia and China's reluctance to use military force even after the clear failure of serial negotiations. Finally, in 2003 Darfur became the latest tragedy of genocide. Again, Russia and China have been timid of calling the conflict genocide thus avoiding any affirmative action to stop it. These cases all show that where one state is unwilling to be involved in stopping genocide, their right and power to the veto stops or delays the international community from preventing and punishing genocide, regardless of whether the veto is used or merely seen as a threat. Therefore, for future prevention of genocide, the veto needs to be changed to prevent its use in times of genocide.

Preface

My interest in genocide comes in large part because of my father's history. Born 1936 in eastern Poland, he and his family were hoarded into cattle trains during World War II for a six week journey to Siberia, Russia. There under the Russians in concentration camps they were forced to log trees in the severe weather conditions with meagre food, water, and medicinal rations provided. Many died, including my father's mother and two elder sisters. When Germany then attacked Russia in 1941, the Polish prisoners were freed. My father was brought to New Zealand along with over 700 other Polish children, initially staying in a camp in Pahiatua. Before his father eventually found him in New Zealand, my father was fostered out; but because he couldn't speak English, the New Zealand students severely bullied him. To this day he is averse to speaking Polish.

During WWII, six million Poles died from different causes but as a result of the same underlying reason they were an 'inferior race' – they were Poles. All my life I have tried to come to grips with what happened to my father and his family. It is a reality for me. I have lived not only with the stories, but with a father tormented by his past. Although the extermination of the Poles is not considered genocide in the strictest sense, it is a reality that the Poles were targeted because of their location and ethnicity.

I don't believe that I shall ever be able to fully understand genocide. It is so incomprehensible because one does not have the choice to be a target of it or not,

they are selected purely because they belong to a certain group; their individual worth is never considered. However, this thesis has helped me understand the political realities of genocide. Thankfully there is still an innocent and idealistic part in me that hopes for a better and more peaceful world where genocide ceases to exist.

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To my Mum who inspires me still.

List of Acronyms

AMIS	African Union Mission in Sudan
ASEAN	Association of South East Asian Nations
AU	African Union
CAR	Central African Republic
CPK	Communist Party of Kampuchea
DPKO	Department of Peacekeeping Operations
EC	European Community
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOSOC	Economic and Social Council
EU	European Union
FAR	Rwandese Army Forces
FRY	Former Republic of Yugoslavia
GOS	Government of Sudan
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IFOR	Implementation Force
IMT	International Military Tribunal
JEM	Justice and Equality Movement
JNA	Yugoslav National Army
KLA	Kosovo Liberation Army
MRND	Mouvement Républicain National pour le Développement
NAM	Non-Alignment Movement
NATO	North Atlantic Treaty Organisation
NIF	Neutral International Force
OSCE	Organisation for Security and Cooperation in Europe
RPF	Rwandan Patriotic Front
RRF	Rapid Reaction Force

SLA	Sudan's Liberation Army
UK	United Kingdom
UN	United Nations
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
UNAMIR	United Nations Assistance Mission in Rwanda
UNAMIS	United Nations Assistance Mission in the Sudan
UNGA	United Nations General Assembly
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIS	United Nations Mission in the Sudan
UNOMUR	United Nations Observer Mission Uganda-Rwanda
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNTAC	United Nations Transitional Authority in Cambodia
UNWCC	United Nations War Crimes Commission
US	United States of America
USSR	Union of Soviet Socialist Republics
WW	World War

For where it is in our power to act, it is also in our power not to act.

Aristotle

Table of Contents

Abstract	ii
Preface	iv
Acknowledgements	vi
List of Acronyms	viii
Table of Contents	xi
 Introduction: Prevention of Genocide, One Aspect	 1
 Part One: Introducing International Law	
Chapter One: Introduction	5
Chapter Two: Defining Genocide	7
Chapter Three: The Case of Armenia	13
Chapter Four: The Holocaust of the Jews and Others	22
Chapter Five: Birth of the Genocide Convention	32
Chapter Six: Conclusion	46
 Part Two: Since Then	
Chapter Seven: Introduction	48
Chapter Eight: Cambodia	50
Chapter Nine: Rwanda	70
Chapter Ten: Former Yugoslavia (Bosnia and Kosovo)	86
Chapter Eleven: Darfur, Sudan	107
Chapter Twelve: Conclusion	122
 Part Three: Changing for a Better Future	
Chapter Thirteen: Introduction	127
Chapter Fourteen: Veto History	129
Chapter Fifteen: Discussion of the Veto's Reform	134
Chapter Sixteen: Preventing Genocide through Changing the Veto	139
Chapter Seventeen: Conclusion	143
 Conclusion: 'Never Again'	 145
 Annex: Convention on the Prevention and Punishment of Genocide	 149
 Bibliography	 156

Introduction: Prevention of Genocide, One Aspect

As I write this thesis, there is a genocide occurring in Darfur, Sudan. The United Nations Genocide Convention of 1948 has inarguably fallen short of the tacit hope within it of 'never again'. 'Never again' has become somewhat of a horrible joke as the world has witnessed genocide, after genocide, after genocide. One of the biggest flaws of the convention is the definition, or the unwillingness of international leaders to call a genocide a genocide, seemingly playing out Act II, Scene II from *Romeo and Juliet*:

'Tis but thy name that is my enemy;
 Thou art thyself [a conflict], though not a [genocide].
 What's [genocide]? it is nor [death], nor [torture],
 Nor arm[s], nor [conflict], nor any other part
 Belonging to a [war]. O, be some other name!
 What's in a name? that which we call a rose
 By any other name would smell as sweet;
 So [genocide] would, were [it] not [genocide] call'd,
 Retain that [horrible monstrousness] which [war] owes
 Without that title. [Genocide], doff thy name,
 And for that name which is no part of thee
 [We will deny it] all [ourselves].¹

Unfortunately, by another name, the international legal responsibility does change, leaving millions to suffer by the act. However, this thesis is not intended to challenge the legal definition nor is it to challenge the fault of leaders to label genocide correctly, instead this thesis aims to look at one aspect of the future international prevention of genocide through another major flaw – the United Nations Security Council (UNSC) permanent members right to veto.

¹ William Shakespeare, 'Romeo and Juliet', in Jeremy Hylton, *The Complete Works of William Shakespeare*, 1993, http://shakespeare.mit.edu/romeo_juliet/romeo_juliet.2.2.html (28 February 2007), Act II, Scene II.

The veto power as given to permanent members of the UNSC is a large topic in and of itself, but it is important to see the connection it has with genocide prevention and punishment. This thesis argues that future international prevention of genocide can be addressed by the reformation of the veto power within the UNSC. The UNSC has been afforded certain responsibilities concerning conflict in the international interest. The right for the United Nations (UN) to intervene in a conflict militarily is given to the UNSC, but any permanent member of the UNSC can veto or threaten to veto any intervention. This can have, and has had devastating consequences. The purposes of the UNSC, and UN at large, must overcome such major and controversial obstacles that only inhibit the progress of preventing and punishing genocide.

This thesis has been divided into three main parts. Part one, discusses the many different, and varied, definitions of genocide, especially the definition given in the Genocide Convention which is the basis for all legal international intervention. It also looks at the Armenian genocide demonstrating the failure of the international community's attempts to prevent or punish the then moral crime. During World War II (WWII), genocide occurred again with the holocaust. This time the world united to punish the perpetrators of the crime in the Nuremburg trials, and to prevent similar heinous genocides from happening again by creating international law against genocide, in the Genocide Convention.

Part two examines four genocides that have occurred since the Convention. These are the Cambodian, Rwandan, former Yugoslavian genocides, and the current case in Darfur, Sudan. Each case shows the international community's concern, in particular that of the UNSC, and subsequent intervention, or lack thereof. The

Darfur case is most significant as two permanent member of the UNSC are reluctant to support any UN intervention in what is clearly a case of genocide. The people of Darfur are suffering from the choices of these two countries, but this is evidence of the strong consequences of the vital mediatory role of the veto.

The history and the responsibilities given to the UNSC, and most importantly the veto, are discussed in part three. It describes the reform discussions past and present that have taken place within the UN. This final part is a conglomeration of parts one and two, and considers the advantages and disadvantages of changing the veto power for the purpose of preventing and punishing genocide. It is argued that by changing this veto power, it is addressing one aspect that has until now halted and delayed the prevention and punishment of genocide. By changing the veto power the international community can more fully achieve the hope of 'never again'.

Part One: Introducing International Law

Chapter One: **Introduction**

The idea of genocide is relatively new, as will be discussed in this section. Chapter two, 'Defining Genocide', considers the roots of genocide as a descriptive term. It is important to look at its roots to more fully understand what it was intended to mean. Also, this chapter explores a range of different meanings taking a very holistic approach from the debates leading up to the Genocide Convention, and opinions from a range of scholars. The Convention is very restricting, for certain reasons which will be discussed, but hopefully in the future there will be room for more thorough and extensive additions to the Convention; this is because defining genocide is vital to life.

'The Case of Armenia' is examined for several reasons. It is the first modern genocide which was systematised using the abilities of the industrialised world to significantly impact the population of the Armenians in Turkey. It also gained widespread international recognition which in turn resulted in the international community's first attempts to address how to deal with genocide. Despite this, all attempts failed, with Turkey currently denying it ever happened but rather claiming it was all part of the common atrocities that occur during a war.¹ Armenia has had enormous repercussions in the world of genocide as we know it. Had it been prevented, or the perpetrators been properly punished, we may never have witnessed

¹ European Communities, 'Bulletin EU 11-2000, Enlargement (2/12): 1.5.2. Parliament Resolution on the 1999 Regular Report from the Commission on Turkey's Progress towards Accession', 2001, <http://europa.eu/bulletin/en/2001/p105002.htm> [8 March 2007]. The European Union (EU) is pressuring Turkey to change its official position and to recognise the Armenian genocide before joining the EU.

the holocaust, and subsequently all other genocides that have occurred since. Even the Genocide Convention itself might not have come into existence.

The holocaust is vital to any study of genocide because it was from this that the world really learnt the true meaning of what it is, and the extent to which it could go on without being checked. The term was created and the international community made sure that this time the perpetrators were held accountable for their moral wrongdoing. Not only that, but the international community came together to ensure it never happened again by creating international law against it in the Genocide Convention.

Finally this part analyses the Genocide Convention deciphering what it literally means at face value. This has been carefully considered as it determines the responsibilities of the international community in cases of genocide. Moreover, it will also be argued as the legal basis for intervention within a sovereign state, after a state has done all that it can to prevent genocide. Each individual case of genocide discussed in this thesis will rely on the definition as expressed in the Genocide Convention. Overall, this section conceptualises genocide and grounds it in international law.

Chapter Two: Defining Genocide

To begin a study of genocide it is first essential to define it and distinguish it from other armed conflicts. The term genocide was coined by jurist Raphael Lemkin, a Polish Jew, trying to describe the atrocities of the Jewish people during WWII. Technically the word ‘genocide’ is a diffusion of both Greek and Latin, with ‘the Greek word *genos*, meaning a people or nation, and the Latin suffix of *-cide*, for murder.’¹ In simple terms then, genocide literally means ‘murder of a people or nation’. However, despite this explicitly simple definition, in the realms of international legality the word ‘genocide’ is seen to be far more complex in its interpretation. Over time it has become defined by certain acts and specific groups of people which has been the cause of much debate due to the “massacres” which fall outside the confined definition.

For the purpose of this thesis I shall use the international legal definition as described in the 1948 Genocide Convention, as it is the legal framework to which the UNSC works within. However, due to the deficiencies within this framework I will endeavour to discuss the term genocide in great depth to indicate what the Convention could or should mean, and to describe its potential. The Convention itself is discussed in depth in a separate chapter. In general terms, the Convention describes genocide as the intent to physically destroy a group, ‘in whole or in part’. The Convention limits the groups that are protected to national, ethnical, racial, or

¹ Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton. Oxford: Princeton University Press, 2003), p. 8.

religious groups.² It is important to note that original drafts of the Convention included ‘political and other groups’.³ Its final definition excludes political, social, cultural and other groups thus reducing the protection that the Convention could have provided.

Helen Fein includes in the definition of genocide, ‘organised state murder’.⁴ Modern genocide is structured and systematised in a manner that relies on the instruction, or at the very least, the non-intervention of the state’s leaders. Under the creation of the modern nation-state, the power to pull together masses of people under the jurisdiction of the state government has been a powerful tool in the ‘art’ of modern genocide. The genocides discussed in this thesis demonstrate clearly the power of the government as the initial perpetrators, but nonetheless reveals the accountability that lies with everyone who participated in the genocides even though they may not all be held legally accountable.

Other academics have incorporated other essential factors of genocide, with terms such as homicide, democide, politicide, mass murder, ‘one-sided’ ethnic cleansing, mass crime, and massacres.⁵ Massacres are an element of genocide, but as Semelin argues, massacres need to be separated from genocide because ‘genocide’ comes

² Office of the High Commissioner for Human Rights, ‘Convention on the Prevention and Punishment of the Crime of Genocide’. 9 December 1948. <http://www.unhchr.ch/html/menu3/b/p-genoci.htm> (5 March 2007), Article II.

³ Leo Kuper, *International Action Against Genocide (Revised)* (London: Minority Rights Group, 1984), p.3.

⁴ Ibid, quoted by Helen Fein.

⁵ Jacques Semelin, ‘Analysis of a Mass Crime: Ethnic Cleansing in the Former Yugoslavia, 1991-1999’, in Robert Gellately and Ben Kiernan (eds.), *The specter of Genocide: Mass Murder in Historical Perspective* (Cambridge: Cambridge University Press, 2003), pp.353-354.

under international law'.⁶ However he agrees that 'genocide always implies one or more massacres', but a massacre does not always imply genocide.⁷ A massacre is to kill a number of people 'under cruel or atrocious circumstances'.⁸ Because only genocide is covered by international law to confuse the two terms could mean the difference in the level of protection that one group is entitled to.

Although genocide has a strong element of ethnic cleansing, ethnic cleansing being the forcing of one ethnic group out of a particular area, it differs because it may or may not include the extermination of that group. An ethnic conflict is between two or more sides, each side being from a particular ethnic group. The roots of the conflict may vary from 'colonial legacy', to religion, to different levels of development, poor leadership' and so forth.⁹ The end result is the inability of two or more cultural groups to live together, and the best solution may [seem to] be some form of separation'.¹⁰ Again the conflict's intent is not to destroy but to separate the two groups, unlike genocide which is 'one-sided' with the intent to completely eradicate the other.

Now that genocide has been defined in and of itself, it is important to note the differences between genocide and other armed conflict. Firstly, the most typical conflict is war. War is generally considered as a conflict between two or more states, although since the end of the Cold War, intra-state war has been on the increase.

⁶ Ibid. p.354.

⁷ Ibid.

⁸ Frederick C. Mish (ed.), *The New Merriam-Webster Dictionary*, (Massachusetts: Merriam-Webster Inc, 1989), s.v. massacre.

⁹ Stephen Ryan, 'Nationalism and Ethnic Conflict', in Brian White, Richard Little, and Michael Smith (eds.), *Issues in World Politics*, 2nd edn, (Hampshire, New York: Palgrave, 2001), p.135.

¹⁰ Ibid, pp.134-135.

The dictionary defines war as ‘a struggle between two opposing forces for a particular end’,¹¹ usually for territory, political power, or independence. Genocide is not war because it is one-sided and against civilians. Its primary intent is to destroy a specifically targeted group of people.¹² Self-defence from genocide should not be confused as an act of genocide. A civil or internal conflict is fought on two or more sides, and depending on the intent of the opposing sides, it may or may not be genocide.

Since early Christian times, war has become enshrined in international law and morality¹³ and can be legal in circumstances of self-defence, while genocide remains illegal. War divides the population up into two groups, legal combatants with rights and responsibilities, and civilians. While combatants cannot legally target civilians, war does involve the killing of civilians. However, international law states that there must be a level of proportionality according to military need.¹⁴ When genocide is performed, it is one group of people aiming for the extinction of another group, or in other words, the intentional killing of civilians.

Other conflicts include terrorist acts, guerrilla warfare, revolutions, revolts, and coup d’état. Maxwell defines terrorism as the use or even threat of violence targeting

¹¹ Mish (ed.), *op cit*, s.v. war.

¹² Genocide may include the purpose of gaining territory from a targeted group.

¹³ Joseph S. Nye, *Understanding International Conflict: An Introduction to Theory and History*, 4th edn, (New York, San Francisco, Boston, London, Toronto, Sydney, Tokyo, Singapore, Madrid, Mexico City, Munich, Paris, Cape Town, Hong Kong, Montreal: Longman, 2003), p.24.

¹⁴ See ‘Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949’, ‘Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977’, and ‘Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977’, in International Committee of the Red Cross, ‘International Humanitarian Law – Treaties and Documents’, 2005, <http://www.icrc.org/ihl.nsf/CONVPRES?OpenView> (8 March 2007).

civilians, government officials, or off-duty military forces, ‘... to scare a broad audience beyond the actual victims’.¹⁵ Their intent is not to destroy a particular group of people, like genocide, but rather to impose a political or religious ideological change. Guerrilla warfare, while looked upon as being in the same vein as terrorism, is considered, in more favourable light, as ‘freedom fighting’. Both terrorists and guerrilla fighters are usually non-state actors, unlike the perpetrators of genocide which tend to be government-led. Genocide isn’t so much about scare tactics as it is about killing tactics, where the end result is extinction not the winning of a war.

Revolutions, revolts, and coup d’état are all very similar to each other: a revolution being ‘the overthrow . . . of one ruler or government and substitution of another by the governed’;¹⁶ a revolt, ‘to throw off allegiance to a ruler or government . . . rebellion’;¹⁷ and a coup d’état, a ‘sudden violent overthrow of a government by a small group’.¹⁸ None of the above intent is *prima facie* to in any way destroy a group of people, but rather to change a way of life, which can lead to genocide but usually does not. There generally will be the inevitable loss of life and certain persons or groups will be targeted, but this does not constitute genocide.

It can thus be concluded then that genocide is at the very least the act by one side to intentionally destroy in whole or in part a group of any given people, but legally

¹⁵ Bruce Maxwell, *Terrorism: A Documentary History* (Washington, D.C: CQ Press, 2003), p.xv.

¹⁶ Mish (ed.), *op cit*, s.v. revolution.

¹⁷ *Ibid*, s.v. revolt.

¹⁸ *Ibid*, s.v. coup d’état.

restricted to 'national, ethnical, racial, or religious groups'.¹⁹ Victims are innocent civilians selected to be raped, persecuted, killed and mutilated because they were born of, or belong to a group of which the mere name of may conjure up hatred. Genocides predate the holocaust and even the Armenian genocide to that of biblical times and certainly were abundant in times of colonisation.²⁰ Modern technology has differentiated genocides in the twentieth century from all others through system and thoroughness. The results of genocide are greater than ever before and that is why the international community must put prevention and punishment of genocide at the forefront of international relations.

¹⁹ Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide'. 9 December 1948, *loc cit.* Article II.

²⁰ United Nations, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide Prepared By Mr. B. Whitaker*, (UN Doc. E/CN.4/Sub.2/1985/6, 2 July 1985), pp.6-7, para. 20.

Chapter Three: **The Case of Armenia**

The first state-driven systematised genocide in modernity occurred last century in what is known as the Armenian genocide. During WWI, more than one and a half million¹ Armenians died in Turkey's attempt to create a pan-Turkic identity. Although it has little international recognition today as genocide, it is of deep importance to this study because it clearly demonstrates the international community's original ability to intervene, even though the outcome was not successful. Again, despite now being unrecognised by the majority of the international community, by definition of the Genocide Convention, the Armenian tragedy was clearly a case of genocide. This chapter examines the Armenian genocide discussing the intent, methods, and the international response.

The Armenian civilisation has been around since the beginning of world history, and was the first country in the world to adopt Christianity as its official state religion in A.D. 301.² They became subject to the expanding Ottoman Empire in the eleventh century.³ Under the Ottoman Empire, the Armenians, along with other non-Muslims, were protected subordinates, but as the Ottoman Empire faded away from existence in the nineteenth century, squeezed out by the encroaching Christian European powers, the Empire's struggle turned inward. In the mid nineteenth century Turkey implemented changes to fortify itself. It sought to become a nation-

¹ Rouben Paul Adalian, 'The Armenian Genocide' in Samuel Totten, William S. Parsons, and Israel W. Charny, *Century of Genocide*. 2nd edn, (New York, London: Routledge, 2004), p.69.

² Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton, Oxford: Princeton University Press, 2003), p.3.

³ Adalian, *op cit*, p.53.

state, and felt homogenising the state to one Turkish population would help accomplish this task.⁴

The Armenians were in a vulnerable position. As they were seen to have a rich and solid culture, and were non-conforming to a complete Turkic identity, they were thus the target of extreme violence. Their religion put them in a strong position with the European powers enabling them to gain support from their counterparts, such as Russia. Some Armenians came to believe that there was the possibility of independence. The likelihood that this support could eventually break the remains of the Empire brought fear amongst the Turks. The reality of the fear was demonstrated in massacres claiming over two hundred thousand Armenian lives in 1894-96 and 1909⁵, which were to prelude the Armenian genocide. Yet the Armenian massacres warranted insignificant intervention from the greater powers.⁶ Instead it brought a chain of genocides that were to occur in the twentieth century. The Jewish holocaust can be directly attributed to the Armenian genocide, and that genocide may never have occurred if the massacres had been prevented or stopped in time.

Prior to the genocide, a fundamental factor that led to the genocide was the Young Turk revolution in 1908 led by members of the Committee for Union and Progress. Initially the reformation was to be of liberation but that was not to last long. In their

⁴ Sara Cohan, 'A Brief History of the Armenian Genocide', *Social Education*, Vol. 69, No. 6, 2005, pp.333-337.

⁵ Vahakn N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus* (Providence, Oxford: Berghahn Books, 1995), pp.175, 182.

⁶ The European powers did make some attempts to stop Armenian injustices, such as the Armenian Reform Agreement signed on 8 February 1914, an international agreement 'to respect and uphold the rights of the minority Armenians'. But, their lack of unity prevented them from actually stopping the Turks from attacking and killing the Armenians. By December 16, 1914 Turkey had cancelled the agreement. See Jackson Nyamuya Maogoto, *War Crimes and Realpolitik: International Justice from World War I to the 21st Century* (Boulder, London: Lynne Rienner Publishers, 2004), pp. 42-43, 68.

desire to reform the empire to what it had once been they looked to other European states to exemplify. Nationalism was again brought into the fore. Weitz says that '[f]rom their imagined view of modern Germany and modern France, the young Turks understood nationalism as a key to the creation of a strong, powerful state that would be . . . at least the equal of those of western Europe.'⁷ Germany came to be the model state, and even provided military training and support for Turkey.

With the development of Turkey's relationship with Germany, they joined WWI in November 1914 taking Germany's side, with the promise from Germany that the empire would stay intact. Again the Armenians were to be seen as the internal enemy, as any dissension within would compromise Turkey's position. This time though the massacres had been a template, and under the war situation the possibility of diminishing the Armenian population was well established. Much like the holocaust that it preceded, the Armenian genocide was done under the guise of war. War provided 'emergency circumstances' and heightened fears that made it acceptable 'to carry out extreme measures that they would not [have] dare[d] venture in peacetime'.⁸ By February 1915 the Young Turks began its procedures to intentionally exterminate the Armenians.⁹

The first step into the Armenian Genocide was the official disarming of Armenian soldiers and civilians, beginning in February 1915.¹⁰ Those serving under the Ottoman Empire became road labourers, though most were shot outright. The arrest

⁷ Weitz, *loc cit.*

⁸ Ibid, p.4.

⁹ Leo Kuper, *International Action Against Genocide (Revised)* (London: Minority Rights Group, 1984), p.6.

¹⁰ Ibid.

and deportation of Armenian leaders left them leaderless and defenceless.¹¹ Step two was the deportation of the general Armenian populous from Turkey to Syria and Iraq via cattle trucks or by foot.¹² Adalian describes this part as the most thoroughly implemented part of the plan'.¹³ Town and village were cleansed of Armenians. They were given only a few days notice to prepare for their long and fateful journey.¹⁴ Men were separated from women and children, and a great number of the men were executed.¹⁵

Along the way the Armenians were subject to the elements of nature and the abuse of Turkish nationals. The Ottoman government wilfully neglected to provide food and shelter, nor did they provide protection from the bands of human enemies. The government was involved in a 'Special Organisation' which by late 1914 had begun releasing specially selected criminals from prisons; these criminals were given the task to lead the Armenians.¹⁶ The Armenians were victims of robbing, rape, kidnapping, held ransom, and killed by '...the killing units ...with sword and bayonet'.¹⁷ It is not hard to imagine that under those terrible conditions only 'a quarter of the deportees' survived'.¹⁸ At their destination, death and despair followed with some tens of thousand dying from the extremities in weather conditions. They were shot if they attempted to quench their thirst in the Euphrates River. Men, women, and children were abused in the most inhumane ways.¹⁹ All in

¹¹ Ibid.

¹² Weitz, *op cit*, pp.4-5.

¹³ Adalian, *op cit*, p.55.

¹⁴ Ibid.

¹⁵ Weitz, *op cit*, p.5.

¹⁶ Dadrian, *op cit*, p.236.

¹⁷ Adalian, *op cit*, p.56.

¹⁸ Ibid.

¹⁹ Ibid, p.57.

all, around 1.5 million Armenians died, around 800,000 are attributed to direct killings.²⁰

The international political response was initially of merit, but overtime the interest burned out. Henry Morgenthau, the American ambassador to the Ottoman Empire at the time, is reported to have telegraphed the American Secretary of State describing the Turkish actions as “race murder”.²¹ Following this, the plight of the Armenians was in the international public domain receiving a share of media attention.

International attempts were made to help aid the Armenians. The allied governments warned the Turkish government that they would be held responsible,²² but this was ignored as WWI took the limelight.

Turkey was forced to sign the Armistice on 30 October 1918, at the end of war, and thus became subject to the victors mercy and justice.²³ However, international humanitarian law was at that time largely restricted to war crimes and granted near complete sovereignty. Nicolas Politis, Foreign Minister of Greece, proposed to expand the laws within war crimes to include the crime of the sovereign state Turkey against their own civilians, the Armenians.²⁴ Objections to the proposal kept the moral crime under the established international humanitarian law. The Paris Peace Conference Commission final report, 29 March 1919, stated that Turkey was ‘. . .

²⁰ Dadrian, *op cit*, pp.224-225.

²¹ US ambassador Henry Morgenthau Sr. as quoted in Samantha Power, “*A Problem from Hell*”: *America and the Age of Genocide* (New York: Basic Books, 2002), p.6.

²² Gary Jonathan Bass, ‘International War Crimes Trials are Necessary’, in Henny H. Kim (ed.), *War Crimes* (San Diego: Greenhaven Press, 2000), p.131.

²³ Dadrian, *op cit*, p.303.

²⁴ *Ibid*, p.304.

guilty of offences against the laws and customs of war or the laws of humanity, [and were] liable to criminal prosecution.²⁵

The Committee for Union and Progress disbanded, and the seven top leaders fled the country. Under pressure from the Allied Powers, the new Turkish government in 1919, arrested and detained scores of remaining accused Turkish nationals, including other former wartime leaders.²⁶ They were tried in the Ottoman court in Constantinople. Many of those tried were found to be guilty.²⁷ Nevertheless, the Turkish trials lost momentum from pressure of Turkey protestors opposed to the execution of an accused district commander in April 1919.²⁸ Britain continued its push for justice and between May 1919 and August 1920 it had apprehended 118 Turkish detainees and relocated them to Malta.²⁹ But with dwindling international and domestic interest and the taking of British hostages, they were eventually, and regrettably, exchanged for British prisoners on 1 November 1921.³⁰

The Peace Treaty of Sèvres, 10 August 1920, included several articles on the trial and punishment of the perpetrators in which Turkey was obliged to allow the Allied Powers the right to hold international trials and punish the accused. They were to surrender all those individuals accused for that purpose.³¹ Turkey protested against international interference as contrary to its right of Sovereignty.³² By this time international support for acting on the treaty was failing due to a dispute between the

²⁵ Ibid, p.305.

²⁶ Those that had fled the state were tried *in absentia*.

²⁷ Dadrian, *op cit*, p.330.

²⁸ Ibid, p.307, and Bass, *loc cit*.

²⁹ Maogoto, *op cit*, p.59.

³⁰ Dadrian, *op cit*, p.311.

³¹ Ibid, p.305.

³² Maogoto, *op cit*, pp.58-59.

Allies and the secretive courting of the popular Turkish Nationalists by France and Italy who sought to appease the Turks. Turkey and its populous pushed harder for sovereignty rights, and thus were reluctant to participate in the prosecutions, or give necessary evidence.³³

Nothing ever happened to the leaders of the genocide, their verdicts were, in the end, annulled. The international consensus on how to serve justice had been uncertain and thus, given time, '[t]he initial impulse to seek justice ... faded ...'³⁴ into national ambitions of political and economic gain. In 1923, the treaty was replaced by the Treaty of Lausanne which granted amnesty to Turkish officials.³⁵ The warning from Allied governments eight years earlier to hold responsible the perpetrators of the genocide proved to be an empty threat.

Not only was the Ottoman Empire let off from their horrendous crime, international law kept the gate open allowing other international genocides in the future. The League of Nations was organised at the end of WWI to '... promote international co-operation and to achieve international peace and security'.³⁶ It focused on 'external aggression' between states.³⁷ Despite its efforts for peace, the League of Nations was careful not to encroach upon State sovereignty, thus states were left

³³ Ibid, and Dadrian, *op cit*, pp.308-10.

³⁴ Dadrian, *op cit*, p.303.

³⁵ Ibid, p.305, and Maogoto, *op cit*, p.62.

³⁶ The Avalon Project, 'The Covenant of the League of Nations', 1996, <http://www.yale.edu/lawweb/avalon/leagcov.htm> (5 March 2007), Preamble.

³⁷ Ibid, Article 10.

unaccountable to human rights injustices in their own country.³⁸ This international organisation omitted any prevention or punishment of any future genocide.

At the close of WWI, the international community had its chance to punish those responsible for the Armenian genocide. The international community also had the opportunity to create law that would prevent and punish future genocide. But the international community at that time failed to do either. The holocaust began on the heels of the Armenian genocide. However, for the Armenians, the tragedy continues. Since the amnesty was given to Turkey officials, Turkey has repudiated any claims that there was genocide in their state. As Turkey stands as the political bridge to the troublesome Middle East, other governments have supported Turkey's claim. However there has been recent international pressure by some states for Turkey to recognise the Armenian genocide.³⁹

The Armenian genocide was a horrible moral crime that should never have occurred, or been forgotten. To this day, the Turkey government and the majority of states internationally have failed to recognise it as genocide. However, all the research points to the demise of the Armenian population during WWI in Turkey as the intentional genocide. This case is most notable because of the lack of international will-power to prevent or punish, or even to get international consensus that it did

³⁸ Human rights barely existed at this time. International human rights and humanitarian laws had been evolving since the end of the nineteenth century, and more so after WWII. Sovereignty was thus near complete giving States full rights over their own citizens. The application of human rights existed only when a State committed gross crimes against citizens of another State.

³⁹ Recent developments have seen stronger political pressure for Turkey to allow open debate on the genocide. France has taken the approach of outlawing the denial of the genocide causing much tension between Turkey and France. To a lesser degree, other states within the EU are also pressuring Turkey to change its official position and to recognise the Armenian genocide before joining the EU. As a collective entity, the EU is also requesting Turkey to change its position, however it is not a prerequisite for Turkey's membership into the EU.

actually happen as genocide and not just as war casualties. This genocide set the unfortunate precedent to a century of genocides. If this genocide had been stopped or effectively punished, then we might never have known the holocaust.

Chapter Four: **The Holocaust of the Jews and Others**

The holocaust has been argued as the worst genocide in the world's history. The technical abilities and the wilful perpetrators together culminated in the genocide of millions of innocent civilians. The tragedy brought about a great international response, greater and more determined than the Armenian genocide had gained. For the first time in modern era, Nazi individuals accused of 'war crimes' were tried before an international tribunal. The international community determined to prevent other genocides by creating the Genocide Convention in order to criminalise genocide and authorise the prevention and punishment of the crime by the international community.

On August 22, 1939, Adolf Hitler is alleged to have given the charge,

'Our strength consists in our speed and brutality. Genghis Khan led millions of women and children to slaughter – with premeditation and a happy heart. History sees in him solely the founder of a state. It's a matter of indifference to me what a weak Western European civilisation will say about me.'

'...Accordingly, I have placed my death-head formations in readiness for the present only in the East – with orders to them to send death mercilessly and without compassion, men, women, and children of Polish derivation and

language. Only thus shall we gain the living space (lebensraum) which we need. Who, after all, speaks today of the annihilation of the Armenians?’¹

Germany and the Soviet Union attacked Poland on 1 September 1939, which led to WWII. Like the Armenian genocide, the genocide of the Jews in Europe and of other peoples occurred under the guise of war. It has been argued that if the Armenian genocide had been prevented or effectively punished, the holocaust might never have occurred. The holocaust was in many regards an advanced industrialised version of the Armenian genocide. For example, the Nazi’s plan relied heavily on railway transportation which had first been used in the Armenian genocide.

Hitler was appointed as the German Chancellor on 30 January 1933. The holocaust could never have been foreseen at this point. However, the psychological environment was slowly developed to allow, by the general German public, the genocide. Hitler was pushing and pulling anti-Semitic policies. The German genocide, commonly known as the holocaust, involved the Jews, but it also included the “Gypsies” or Sinti and Roma, Poles, Slavs and other eastern Europeans, as well as the mentally ill and physically disabled. The number of groups intended to be cleansed or exterminated from Germany, and the proposed conquered lands, has led it to be referred to, in part, as a ‘serial genocide’.²

¹ Adolf Hitler as quoted in Louis P. Lochner, *What about Germany?* (New York: Dodd, Mead & Co., 1942), pp.1-4, in The Genocide Education Project, ‘The Armenian Genocide Resource Library for Teachers’, 2004, <http://www.teachgenocide.com/bkgrnd/hitler.htm> (5 March 2007).

² Robert Gellately, ‘The Third Reich, the Holocaust, and Visions of Serial Genocide’, in Robert Gellately and Ben Kiernan (eds.), *The Specter of Genocide: Mass Murder in Historical Perspective* (Cambridge: Cambridge University Press, 2003), p.241.

Hitler was very tactful about his political position, desiring to have a popular authoritarian regime, thus he was always working within the boundaries of popular German opinion. His two accomplishments were overcoming the Great Depression and releasing Germany from the detested Treaty of Versailles.³ Overtime Hitler was able to persuade the nation that there was a need to establish an ethnically pure Germany for its future strength. The German population became convinced that there was a 'Jewish question', and that according to assumptions on racial superiority, there was a need to cleanse Germany of the 'racially inferior'. Further, even the ethnically German who were physically or mentally disabled were deemed inconsistent to ideas of a perfect German people.

Within Hitler's first six months as Chancellor of Germany, on 14 July 1933, the first laws pertaining to racial purity were established under '...the Protection of the Hereditary Health: the Attempt to Improve the German Aryan Breed'.⁴ These laws sought the sterilisation of the physically and mentally ill⁵ to avoid affecting the descendents of such persons with the "inheritable" diseases.⁶ On 15 September 1935, these laws were further developed with the 'Nuremberg Laws on Citizenship and Race', and again the 'Law for the Protection of German Blood and German Honour'. The first law deemed that most Jews could not be citizens of the Reich and

³ Ibid.

⁴ Law for the Protection of Hereditary Health: The Attempt to Improve the German Aryan Breed, July 14, 1933 in The IB Holocaust Project, 'The Nuremberg Laws', 2007, <http://cghs.dade.k12.fl.us/holocaust/laws.htm> (8 March 2007), title.

⁵ The law specifically targeted persons with: congenital feeble-mindedness, schizophrenia, manic-depression, congenital epilepsy, inheritable St. Vitus dance (Huntington's Chorea), hereditary blindness, hereditary deafness, serious inheritable malformations, and chronic alcoholism. See *ibid*, *loc cit*, Article 1, paras. 2, 3.

⁶ *Ibid*, *loc cit*, Article 1, para. 1.

therefore could not vote.⁷ The latter law prohibited marriages and relationships ‘between Jews and Nationals of German or kindred blood...’. Further, Jewish households were not able to hire female German Nationals or their kindred blood, and finally Jews were prohibited from raising the Reich and national flag, or to present the colours of the Reich. It is hard to comprehend exactly what Hitler’s plans were as they were always changing and evolving. Still at the beginning of WWII, it is apparent that the answer to the ‘Jewish question’ wasn’t yet their total extermination; rather it was to relocate them to parts of conquered Poland.⁸

Political and social rights were restricted for Jewish citizens; they endured forced removal to ghettos and labour camps; businesses and properties were taken away from them; there were constant anti-Semitic speeches from leaders; they were forced to wear the yellow star in order to differentiate themselves from non-Jews; and general ill-treatment from a large minority of non-Jewish Germans was given. In 1941, it even became illegal for a German to be seen in public with a Jew.⁹ It was the same year that plans for a “final solution of the Jewish question” were laid out. From the start of the war, Jews had been killed in their thousands via Nazi death squads¹⁰ and mobile gas vans.¹¹ According to Gellately, by March 1942, 75–80 percent of the Jewish victims who would die in WWII were still alive.¹² The method of extermination was two-fold: first those healthy enough for slave labour were

⁷ The Nuremberg Laws on Citizenship and Race, September 15, 1935, in The IB Holocaust Project, ‘The Nuremberg Laws’, 2007, <http://cghs.dade.k12.fl.us/holocaust/laws.htm> (8 March 2007), Article 4, para. 1.

⁸ Gellately, *op cit*, p.248.

⁹ Gellately, *op cit*, p.249.

¹⁰ Michael J. Kelly, *Nowhere to Hide: Defeat of the Sovereign Immunity Defense for Crimes of Genocide and the Trials of Slobodan Milosevic and Saddam Hussein* (New York: Peter Lang, 2005), p.18. Kelly notes that 1.5-2 million Jews were shot by the *Einsatzgruppen*.

¹¹ Ibid, and Gellately, *op cit*, p.251.

¹² Gellately, *loc cit*.

worked to death suffering malnutrition and medical neglect, and second, the rest were exterminated in gas chambers or firing squads in concentration camps.¹³ By the end of WWII, six million European Jews had died in the holocaust.¹⁴

The purification process of Germany went beyond the case of the Jews. As mentioned earlier, Gypsies and others were also included in the genocide, howbeit, on a different scale to the Jews. The Gypsies were intentionally targeted by the German authorities because as traditional wanderers they were viewed as non-conformists to the German nation-state; they were also seen as ‘racially inferior’. At first they were confined to camps but as the war got underway there was a mass murder of hundreds of thousands of Gypsies.¹⁵ Gellately states that, ‘The death-book of the “Gypsies” in Auschwitz conveys a sense of systematic murder that looks and feels like genocide’.¹⁶

As the previously cited comments of Hitler reveal, the Polish nation was to be intentionally destroyed. Poland was to be “Germanised” and stripped of Polish leaders, Polish education, and Polish culture, thus leading to a “cultural genocide”. They were forced to work as slaves to help the German labour shortages. Like the Jews under German control, the Poles who had been removed to Germany were forced to wear a purple “P” on all their clothes.¹⁷ There were social restrictions put in place for the Polish workers, and laws in place to criminalise Polish participants in

¹³ Donald L. Niewyk, ‘Holocaust: The Genocide of the Jews’, in Samuel Totten, William S. Parsons, and Israel W. Charny (eds.), *Century of Genocide: Critical Essays and Eyewitness Accounts*. 2nd edn. (New York, London: Routledge, 2004), pp.128-129.

¹⁴ Kelly, *op cit*, p.21.

¹⁵ Gellately, *op cit*, p.253. The exact number of Gypsy deaths is uncertain, figures suggest between 100,000 and 500,000.

¹⁶ Ibid.

¹⁷ The Polish purple “P” was introduced before the Jewish yellow star.

Polish-German sexual relations.¹⁸ Debate overhung the non-Jewish Poles as they were traditionally assumed to be “racially inferior”.

German authorities had devised a resettlement plan that although changed several times, included the resettlement of ten million Germans into conquered land to in the East. The population within the located areas consisted of approximately 45 million people, with 31 million declared as “racially undesirable”, to be sent away to Siberia, while the rest were to remain as slaves.¹⁹ As discussed, the European Jews, including the Polish Jews, were gassed, shot, or worked to death. Non-Jews in Poland were similarly worked to death or executed on an “individual basis”. The WWII Polish death toll was six million with a fairly even split between Jews and non-Jews.²⁰

At the start of WWII, Germany and the Soviet Union had sided together to attack Poland, but soon the Soviets were also on the list of targets. The Soviet Union had two factors that determined it as a target of genocide: it was a communist country, and it had a large population of Jews. Hitler attacked the Soviet Union in June 1941 immediately conquering large tracts of land. Within months, hundreds of thousands of Soviets were dead from mass starvation due to the Germans ‘wilful neglect or inability to look after them’.²¹ The war in the Soviet differed from in the West as the

¹⁸ Gellately, *op cit*, p.254.

¹⁹ Ibid, pp.254-56. The percentages of those who were to be ethnically cleansed from the area were, Jews - 100%, Poles – 80-85%, White Russians – 75%, White Ukrainians – 64%.

²⁰ Ibid.

²¹ Ibid, p.250.

Soviet was not a signatory state of the 1929 Convention Relative to the Treatment of Prisoners of War,²² thus the war was with minimal restraints.

The final group, and yet the first to be targeted by the Germans, were the mentally and physically disabled. These human lives were seen as the biological enemies of the state with the common phrase attached to their lives as, “lives not worth living”. The ‘Euthanasia programme’ of disabled people began in 1939, and officially ended in 1941 under intense pressure from within the German public.²³ The method of killing was to gas the ill and disabled patients in gas chambers²⁴, taken from their respective institutions, and then their bodies were cremated. Ashes were sent back to the families in an urn, with fake death certificates indicating arbitrary causes of death such as pneumonia or other illnesses.²⁵ More than 200, 000 Germans died from the complicity of their very own doctors’, who were meant to be their protectors.²⁶

In contrast to the Armenian genocide, the holocaust brought greater international rebuke with punishment promising ‘never again’. The inter-war period had seen an accumulation of international humanitarian and human-rights laws in which states could not kill civilians of other states except in cases of military necessity, but it was still not a crime for a government to kill the citizens of their own state. However the

²² Convention Relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, in International Committee of the Red Cross, ‘International Humanitarian Law – Treaties and Documents’, 2005, <http://www.icrc.org/ihl.nsf/FULL/305?OpenDocument> (8 March 2007).

²³ Hugh Gregory Gallagher, ‘Holocaust: The Genocide of Disabled Peoples’, in Samuel Totten, William S. Parsons, and Israel W. Charny (eds.), *Century of Genocide: Critical Essays and Eyewitness Accounts*. 2nd edn. (New York, London: Routledge, 2004), p.205. and Gellately, *op cit*, p.245. Gellately points out that the order was given in October 1939, however Hitler backdated the order to September, “. . . for the beginning of the “mercy killing operations”, as if the first day of the war represented for him a declaration of war against all Germany’s biological “enemies”.’

²⁴ This technique was later used on the Jews.

²⁵ Gallagher, *op cit*, p.210.

²⁶ *Ibid*, p.205.

evolution of these laws had reached a point whereby the international community was prepared to overrule state sovereignty and punish the perpetrators of WWII war crimes and atrocities.²⁷ In October 1943, the League of Nations Union, an unofficial body, ‘proposed the establishment of an international criminal court whose jurisdiction was to encompass ‘...crimes in respect of which no national court had jurisdiction (e.g. crimes committed against Jews)...’.²⁸ Although the International Criminal Court (ICC) has only recently come into existence, the Allies did establish a temporary International Military Tribunal (IMT) for WWII war criminals.

The Moscow Declaration of 1 November 1943 sanctioned minor Nazi war criminals to be tried and punished in their State. Alternatively, major Nazi war criminals were to be tried under the Allies.²⁹ Preceding this Declaration was the establishment of the United Nations War Crimes Commission (UNWCC) in October of the same year, which was to keep records of war crimes and criminals.³⁰ Almost two years later, the victorious Allies followed through with the Moscow Declaration by establishing the IMT under the London Agreement on 8 August 1945.³¹

The victorious allies, at the conclusion of war, and opting for the judicial process to trial the heinous perpetrators of the genocide, was to bring justice not retribution.

Falk argues that the IMT commonly known as the Nuremburg Tribunal was formed

²⁷ Jackson Nyamuya Maogoto, *War Crimes and Realpolitik: International Justice from World War I to the 21st Century* (Boulder, London: Lynne Rienner Publishers, 2004), p.79.

²⁸ William A. Schabas, *Genocide in International Law* (Cambridge, New York, Melbourne, Madrid: Cambridge University Press, 2000), p.30.

²⁹ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremburg Legacy* (New York: Oxford University Press, 1997), p.163, Although allegedly Winston Churchill was originally inclined to execute the Nazi criminals, he was otherwise dissuaded by the US.

³⁰ Maogoto, *op cit*, pp.88-89.

³¹ Ratner and Abrams, *loc cit*.

because of mounting public pressure for justice, the guilty conscience of the West that not enough had been done to stop the war crimes, and consensus that Germany was not to be held collectively responsible and result in another failed Treaty of Versailles.³² The IMT charter outlined the ‘jurisdiction, substantive law, and procedural principles governing the Nuremburg Tribunal’.³³ The Charter stipulated that Nazi criminals were to be tried under conspiracy, crimes against peace, war crimes, and crimes against humanity’ for acts of genocide before or during the war.³⁴

The Nuremburg trials were held from November 20, 1945, to 1949, in Nuremburg, Germany.³⁵ Twenty-four major criminals were tried in its first year, convicting 19, one *in absentia*, and serving 12 with death sentences.³⁶ Following the Trial of Major War Criminals, around 200 German war crime defendants were tried.³⁷ Those found guilty of intentionally participating and planning elements of the genocide were punished by death or time in prison. At the trials it is important to note that ‘genocide’ was still not an international crime. The Charter of the Nuremburg Tribunal did not include ‘genocide’, however, during the trials the term was used expressly against the defendants during proceedings, though it was technically and legally still seen as a ‘crime against humanity’. Because the international

³² Richard Falk, ‘Accountability for War Crimes and the Legacy of Nuremburg’, in Aleksandar Jokic, (ed.), *War Crimes and Collective Wrongdoing: A Reader* (Massachusetts, Oxford: Blackwell Publishers, 2001), p.121.

³³ Ratner and Abrams, *loc cit*.

³⁴ Schabas, *op cit*, p.36 and Maogoto, *op cit*, p.98.

³⁵ Bernard D. Meltzer, ‘Remembering Nuremburg’, in Belinda Cooper (ed.), *War Crimes: The Legacy of Nuremburg* (New York: TV Books, 1999), p.20.

³⁶ Schabas, *op cit*, p.37, and Ratner and Abrams, *op cit*, p.164.

³⁷ Doug Linder, ‘The Subsequent Nuremburg Trials: An Overview’, 2000.

<http://www.law.umkc.edu/faculty/projects/ftrials/nuremburg/subsequenttrials.html> (5 March 2007), and ‘The Nuremburg Trials: IMT Charter, Indictments, Verdicts & Sentencing of Major War Figures: Verdicts and Sentences’, [n.d], <http://www.law.umkc.edu/faculty/projects/ftrials/nuremburg/NuremburgIndictments.html> (5 March 2007).

community was prepared to bring to justice the Nazi criminals in the Nuremberg trials, and to overstep the principle of sovereignty, the international community was able to create new international law for the atrocious crime of genocide: the Genocide Convention of 1948. This was to do away with any future uncertainties.

In conclusion, the large-scale atrocities of WWII brought about the Genocide Convention. Nazi Germany, under Hitler, committed a thorough, systematic, cold-blooded mass murder of Jews, gypsies, Poles, Slavs, the mentally and physically disabled, and other 'undesirables'. The holocaust was the epitome of genocide, the case most true to the word. From the depths of arguably the greatest genocide the world has ever known, the international community was able to break through the chains of sovereignty and punish hundreds of the Nazi criminals. There was a legacy borne that sought to prevent and punish future possible genocides. Within the memory of the holocaust and the establishment of the Genocide Convention, the world implicitly hoped for 'never again'.

Chapter Five: **Birth of the Genocide Convention**

In almost sixty years of its existence, the Convention has clearly demonstrated limitations and as Ratner argues ‘. . . it is long overdue for the law of genocide to evolve beyond its 1940s roots to more closely reflect the values and political landscape of [today]’.¹ On the other hand though, the Genocide Convention is the international legal definition; therefore, it is imperative to give a thorough explanation of it. This chapter discusses the significant parts of the Convention by looking at its literal meaning. Included are the terms that remain in the final copy of the Convention, the discussion of some of its changes over the drafting period, and its place within international law. This chapter is for the sole purpose of making the meaning of and obligations of the Genocide Convention, for the international community, absolutely clear.

War crimes, as in crimes between combatants, had been acknowledged prior to WWI and WWII. International human rights law even developed in great strides in the inter-war period, but the issues of sovereignty prevented the laws from protecting citizens from their own governments.² The Nuremburg trials were the stepping stone into international law to hold individuals accountable for crimes committed under the laws of ‘crimes against humanity’, inside and outside their own states. The trials could not prosecute individuals under the crime of genocide, despite being unofficially referred to in the trials, as in the time it was committed it was not

¹ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremburg Legacy* (New York: Oxford University Press, 1997), pp. 41-43.

² Ibid, pp.5-6.

illegal.³ But Raphael Lemkin's drive for an international convention on genocide, and the Nuremburg trials, laid the foundation for the Convention.

The topic of genocide was discussed from the very first meetings of the United Nations General Assembly (UNGA), beginning in 1946. Resolution 96(I), mentioned in the Convention's preamble, proposed that the Economic and Social Council (ECOSOC) study the possibilities of a convention to internationally criminalise genocide and to '...assur[e] international co-operation for its prevention and punishment,...'.⁴ ECOSOC invited the Secretary-General along with a group of international and criminal law experts to prepare a draft convention.⁵ After its review by the UNGA, the draft was revised by the ECOSOC Ad Hoc Committee on Genocide. The draft was again given back to the UNGA where the Sixth Committee revised it, passed it onto a drafting sub-committee of thirteen states, and it was approved by the Sixth Committee.⁶ Finally, on 9 December 1948, the revised draft was unanimously adopted as the Genocide Convention, and was to enter into force on 12 January 1951.⁷ In the process of writing the final Genocide Convention, there were many changes and omissions from original drafts and the original resolution 96(I).

³ Ibid, p.25, and William A. Schabas, *Genocide in International Law* (Cambridge, New York, Melbourne, Madrid: Cambridge University Press, 2000), p.38.

⁴ United Nations, *The Crime of Genocide*, (UN Doc. 96 (I), 11 December 1946), pp.188-189.

⁵ Ibid.

⁶ Ratner and Abrams, *op cit*, pp.25-26.

⁷ Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide'. 9 December 1948. <http://www.unhchr.ch/html/menu3/b/p-genoci.htm> (5 March 2007), Title.

The official title of the Genocide Convention, ‘Convention on the Prevention and Punishment of the Crime of Genocide’,⁸ establishes three things: the international agreement of an international law, the international community’s obligation to act if the crime is attempted or committed, and lastly, the specificities of the crime or offence, against the law, as genocide. The two words that the international community is obligated to act out are, ‘prevention’ and ‘punishment’. To prevent is to stop something from happening, and to punish is to penalise, or the ‘retributive suffering’ usually in consequence to an action. From this, it is understood that party states to the convention have agreed to stop and penalise the perpetrators of the crime genocide, wherever it may be in the world, not excluding their own sovereign states. Or at least accept the work of the international community to prevent and punish genocide, again, wherever it may be. This of course applies only once a state committing genocide has done all it can do to stop the genocide.

The preamble recognising Resolution 96(I), restates: ‘... that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilised world’,⁹ Here, the UN, whose aim is, among others, to prevent future war, to reaffirm human rights, and ‘...to promote social progress and better standards of life in larger freedom’,¹⁰ acknowledges that genocide is the antithesis of these aims. Further the international community condemns or disapproves of the crime. It continues: ‘Recognizing that at all periods of history genocide has inflicted great losses on humanity, and [b]eing convinced that, in order

⁸ Ibid.

⁹ Ibid, *loc cit*, preamble.

¹⁰ United Nations, ‘Charter of the United Nations’. 26 June 1945. <http://www.un.org/aboutun/charter/> (5 March 2007), Preamble.

to liberate mankind from such an odious scourge, international co-operation is required',¹¹ It recognises that genocide has happened in the past, but in order to stop it from happening again in the future, that 'international co-operation is required', meaning that it is essential that two or more states work together to stop genocide. Lastly, the party states agree to the genocide 'as hereinafter provided', thus agreeing to act as the convention, or international law dictates.¹²

Article I affirms that genocide is an international crime both in times of peace and war in which the Contracting Parties undertake to prevent and to punish.¹³ Schabas states that, '...the Genocide Convention, not the Nuremburg Charter, first recognised the idea that gross human-rights violations committed in the absence of an armed conflict are nevertheless of international concern, and attract international prosecution'.¹⁴ So from article I we see that any genocide perpetrated at any given time must be prevented and punished in like manner, although the Convention does not state any given time limit for punishing the crime, nor does it identify appropriate ways of preventing genocide. Further, these parties must 'prevent' and 'punish' because of the term used 'undertake', which is defined as, 'put[ting] oneself under obligation, to take upon oneself as a task, guarantee, [or] promise'.¹⁵ Using these synonyms in place of 'undertake', show the depth of the international law. It not only illegalises genocide, but it also makes it a legal requirement for the international

¹¹ Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide', *loc cit*, Preamble.

¹² *Ibid.*

¹³ *Ibid*, Article 1.

¹⁴ Schabas, *op cit*, p.11.

¹⁵ Frederick C. Mish (ed.), *The New Merriam-Webster Dictionary*, (Massachusetts: Merriam-Webster Inc., 1989), s.v. undertake.

community to prevent and punish the crime and its perpetrators, again in line with international rules of intervention.

Article II is the keystone to the Convention as it defines genocide. The definition given has been contested as discussed in chapter one, but again this definition is the most important because it determines the genocide cases that are punishable by law. And if we, the international community, are to prevent genocide in the future, we must work within the legal means which we have. The convention defines genocide as:

‘any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within a group;
- (e) Forcibly transferring children of the group to another group.¹⁶

Starting from the beginning, genocide is an act or group of acts, but these acts must be accompanied by the intent to destroy the group or groups. Ratner and Abrams express that, ‘... unless this intent element is present, no act, regardless of how

¹⁶ Office of the High Commissioner for Human Rights, ‘Convention on the Prevention and Punishment of the Crime of Genocide’, *loc cit*, Article 2.

atrocious it might be, can constitute genocide'.¹⁷ Determining the intent of genocide is challenging, and as Kuper argues, brings in a 'subjective element'.¹⁸ The term 'intent' was debated in the process of developing Resolution 96(I) and the Convention, but remained for lack of a better word. Evidence in the past has relied on written and oral orders, witness testimony's, labelling of the target group as an enemy, and 'systematic and destructive pattern of behaviour' towards the target group.¹⁹

The writers of the Convention determined that these acts committed with the intent to destroy a certain group, is not restricted to the whole group, rather it is open to the group 'in whole or in part'. It is unclear just how much of a 'part' of a group would figure as genocide. A study in 1985 suggested that 'in part' would need a 'reasonably significant number, relative to the total of the group as a whole, or else a significant section such as its leadership'.²⁰

The groups included in the final and official Genocide Convention are limited to national, ethnical, racial, and religious groups. The inclusion and elimination of certain groups has been a highly contested point since its formulation. There are two different types of national groups. One that is created from the nation-state – a group of people with different ethnicities, religions, and so forth, are bound together in a nation-state, thus forming a nation of people. On the other hand, some national

¹⁷ Ratner and Abrams, *op cit*, p.33.

¹⁸ Leo Kuper, *International Action Against Genocide (Revised)* (London: Minority Rights Group, 1984), p.4.

¹⁹ Ratner and Abrams, *op cit*, p.34.

²⁰ United Nations, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide Prepared By Mr. B. Whitaker*, (UN Doc. E/CN.4/Sub.2/1985/6, 2 July 1985), p.16, para. 29.

groups are created before the existence of the nation-state, united by ethnicity, religion, background, history, or other features. For example, citizens of New Zealand, would usually deem themselves as nationally New Zealanders, whereas, the Kurd population in Iraq, Iran, or Turkey, would consider themselves to belong to the nation Kurdistan. Ethnical and racial groups are quite similar. Race is a hereditary group that one belongs to, whereas one's ethnic group is not limited to a hereditary group but also includes the same language, culture, and customs. Both groups exist across borders. Finally, religious groups include all groups '...united by spiritual ideals or beliefs, whether theistic, non-theistic, or atheistic in nature'.²¹

The other side of the debate are the groups that were excluded from the final Convention – none more debated than political groups. Resolution 96(I), which was unanimously passed, included '...political and other groups ...',²² however in the process of writing the Convention, this was dropped to appease certain parties.²³ It was cut because the Soviets disagreed, reasoning as Kuper explains, 'genocide was essentially bound up with . . . racial theories that spread national and racial hatred and aimed at the domination of the so-called 'superior' races and the extermination of the so-called 'inferior' races.'²⁴ They were also argued to be voluntary groups, unstable and non-permanent in nature.²⁵ In almost 60 years, this exclusion of political groups has been the means of allowing the 'murder' of millions of 'people'

²¹ Ratner and Abrams, *op cit*, p.32.

²² United Nations, *The Crime of Genocide*, *loc cit*.

²³ Kuper, *op cit*, p.3, and Schabas, *op cit*, p.45.

²⁴ Kuper, *loc cit*, p.3. Despite the Soviets position, with their history of political persecution, it can be argued that they would not have undermined themselves by agreeing to such an inclusion. The exclusion of 'political and other groups' from the Convention was held partly responsible for the United States long delay in ratifying the Convention, which took until 1988. Ratner and Abrams, *op cit*, pp.32, 38.

²⁵ Ratner and Abrams, *op cit*, p.32.

with the intent to destroy them because of political affiliation.²⁶ The international community has been at a loss to prevent and punish their gross crimes because of this incomplete definition. Other groups not included are economic, professional, social, linguistic, and gender groups.²⁷

The first act of genocide with the intent to destroy a particular group is to kill members of the group. Death is the total and final destruction of a person, thus being the ultimate and most serious case of genocide. The next act listed is to ‘caus[e] serious bodily or mental harm to members of the group’.²⁸ Bodily harm would include biological experiments, deportation, enslavement, torture, and mutilation of the body. Some accounts of genocide acts have included the mutilation of bodies after the physical death demonstrated as the ultimate power over the life and death of the person and the group at large. However the bodily harm does not have to be permanent.

Mental harm is far more ambiguous. Its beginnings were presented by China with the idea that the use of narcotics on the target group constituted an act of genocide.²⁹ This argument has been debated; nevertheless, mental harm was ultimately accepted as an act of genocide. The idea of mental harm has evolved to include rape and sexual violence, ‘physical injury to the mental faculties’, fear and anxiety.³⁰ Mental harm could also be the act of afflicting any of these or other acts to persuade the target group to believe that they the perpetrators are the stronger and greater group.

²⁶ Such cases as Ethiopia, Cambodia, and Indonesia have demonstrated this point only too well.

²⁷ Schabas, *op cit*, pp.134, 145, 147.

²⁸ Office of the High Commissioner for Human Rights, ‘Convention on the Prevention and Punishment of the Crime of Genocide’, *loc cit*, Article 2.(b).

²⁹ Schabas, *op cit*, pp.159-160.

³⁰ *Ibid*, pp. 161-162.

Article II(c), is the act of '[d]eliberately inflicting on the group conditions of life calculated to bring about its total destruction in whole or in part'.³¹ Inclusive in this category are inadequate food, water, medicinal, sanitation, and clothing supplies, inadequate housing, excessive physical labour, and forced lack of sleep.³² These conditions would ultimately bring about the death of the group, if the genocide were to continue for long periods of time. Ultimately though, these acts would need to be determined as an attempt to destroy the group 'in whole or in part', and separated from the unfortunate cycle of poverty that so often afflicts certain groups of society.

Acts (d) and (e) both relate to destroying the future existence of the group. The first is to '[impose] measures intended to prevent births within a group', and the latter is to 'forcibly transfer children in the group to another group'.³³ Preventing births within a group would include the prohibition of sexual relations and separation of the sexes, prohibition of marriage, sterilization, and forced abortion.³⁴ The case of former Yugoslavia showed that women were kept imprisoned for the purpose of impregnating them with the 'dominant' group.³⁵ Lastly, the transferring of children to another group was in the Conventions inception, seen as an act of cultural genocide. It survived because the transference of children from one group to another would inhibit the future viability of the group.³⁶

³¹ Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide', *loc cit*, Article 2(c).

³² Schabas, *op cit*, p.165.

³³ Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide', *loc cit*, Article 2, (d), (e).

³⁴ Schabas, *op cit*, p.172, and Ratner and Abrams, *op cit*, p.29.

³⁵ Schabas, *op cit*, pp.173-174.

³⁶ *Ibid*, p.176.

Aside from article II(e), the acts included in the genocide definition omit cultural genocide. Cultural genocide consists of prohibiting the use of language, and destroying cultural institutions such as ‘historical or religious monuments, museums, and libraries’.³⁷ It was originally part of earlier drafts of the Convention but was later taken out on the premise that cultural genocide aims to destroy the culture of the group and not the physical group itself; the latter being of most seriousness.³⁸ It was also argued that the inclusion of cultural genocide would lead to the rise of illegitimate cases of genocide and it could hinder legitimate cases of assimilation. If it was included, there was the fear that it would deter states from joining the Convention.³⁹

After defining what genocide is in article II, articles III and IV state who and what is punishable. Acts punishable are: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; and (e) complicity in genocide.⁴⁰ Acts (b) to (d) enforce the legal right to prevent genocide. Punishment for the crime goes beyond issues of sovereignty and immunity for heads of states. All perpetrators of genocide are to ‘...be punished, whether they are constitutionally responsible rulers, public officials, or private individuals’.⁴¹ The fact that sovereign states wilfully agreed to this particular article allowing sovereign leaders to be held accountable, is contrary to the ‘spirit and

³⁷ Ibid, p.63.

³⁸ Ratner and Abrams, *loc cit*.

³⁹ Ibid.

⁴⁰ Office of the High Commissioner for Human Rights, ‘Convention on the Prevention and Punishment of the Crime of Genocide’, *loc cit*, Article 3, (a), (b), (c), (d), (e).

⁴¹ Ibid, Article 4.

ideology of sovereignty'.⁴² The idea behind prosecuting individuals was in response to the failed Treaty of Versailles that had held the state of Germany punishable.⁴³

Articles V, VI, and VII relate to enacting the Convention within the domestic laws of the Contracting Parties, and to provide 'effective penalties'.⁴⁴ Those charged with any of the acts deemed unlawful in the Convention, are to be tried by either a domestic or international trial.⁴⁵ Extradition for those charged is to be granted only under the

domestic laws of the state in concern.⁴⁶ Article VIII states that '[a]ny Contracting Party may call upon the competent organs of the [UN] to take such action under the Charter of the [UN] as they consider appropriate for the prevention and suppression of acts of genocide...'.⁴⁷ This leaves the responsibility of the initial steps of prevention and punishment of genocide on all states party to the Convention. However, under the UN Charter, the UNSC is assigned the task of dealing with international security issues.⁴⁸

The final two articles that will be discussed are IX and XV. The first being that any disputes 'relating to the interpretation, application or fulfilment' of the Convention is

⁴² Richard Falk, 'Accountability for War Crimes and the Legacy of Nuremberg', in Aleksandar Jokic, (ed.), *War Crimes and Collective Wrongdoing: A Reader* (Massachusetts, Oxford: Blackwell Publishers, 2001), p.120.

⁴³ Ibid, p.121.

⁴⁴ Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide', *loc cit*, Article 5.

⁴⁵ Ibid, Article 6.

⁴⁶ Ibid, Article 7.

⁴⁷ Ibid, Article 8.

⁴⁸ See United Nations, 'Charter of the United Nations', *loc cit*, Chapter IV, para. 12.1, 12.2, Chapter V, para. 24.1.

to be dealt with at the International Court of Justice (ICJ).⁴⁹ The latter article gives the opportunity for Contracting Parties to ‘...request a revision of the present Convention at any time...’.⁵⁰ The Convention was written out and closely followed the acts and intents of the holocaust, but the trials of Rwanda and former Yugoslavia have demonstrated the need of expanding the meaning of the Convention. Having the opportunity to modify it to best prevent and punish future genocides is a necessity.

The Genocide Convention can also be confusing in terms of where it is placed in international law. It is closely associated with international criminal law, international humanity law, and international human rights law. From the time of its inception, the Convention declared genocide a crime, thus it falls under the umbrella of international criminal law. Therefore, perpetrators are tried under the recently set up International Criminal Court (ICC). Genocide is listed first among the ‘most serious crimes of international concern’.⁵¹ As a ‘war crime’, despite the Convention’s acknowledgement of it occurring in both times of peace and war, it comes under crimes against humanity.

Furthermore, the Convention also comes under international human rights law as ‘a universal instrument relating to human rights’.⁵² But the larger scope of

⁴⁹ Office of the High Commissioner for Human Rights, ‘Convention on the Prevention and Punishment of the Crime of Genocide’, *loc cit*, Article 9.

⁵⁰ *Ibid*, Article 15.

⁵¹ Office of the United Nations High Commissioner for Human Rights, ‘Rome Statute of the International Criminal Court’, 17 July 1998. <http://www.ohchr.org/english/law/criminalcourt.htm> (5 March 2007), Part II, Article 5.1(a). Other crimes which come under the jurisdiction of the ICC are, Crimes against Humanity, War Crimes, and the Crime of Aggression.

⁵² Office of the United Nations High Commissioner for Human Rights, ‘International Law’ 1996-2007. <http://www.ohchr.org/english/law/> (5 March 2007).

international human rights law includes political, social, and cultural rights, so even though the genocide convention excludes these groups, international human rights law doesn't.⁵³ However, the list of human rights in the International Bill of Human Rights, is not part of international law therefore abuse of human rights evades punishment. Moreover, a political genocide or 'politicide' would continue to evade prevention and punishment. Finally, genocide has also achieved the status as a customary international law, which some would argue allows its definition to broaden.⁵⁴

Lastly, it can be argued that those who signed and ratified the Genocide Convention have agreed to the intervention of another state's affairs. The very act of preventing and punishing perpetrators of genocide, and the Convention acknowledges 'constitutionally responsible rulers', can only be accomplished by some form of intervention. Too often the UN Charter is used to defend the right of 'non-intervention'⁵⁵; yet, if a state is committing genocide, and if they fail to prevent or stop it, then if they are party to the Convention they have predetermined their acceptance of intervention within their own state. They have accepted the obligation on all party states, to prevent and punish the crime wherever and whenever it may be. To argue otherwise would be hypocrisy.

As can be seen, the Genocide Convention is the legal agreement within the international community to prevent and punish the crime of genocide. Although the

⁵³ Office of the High Commissioner for Human Rights, 'Universal Declaration of Human Rights', 10 December 1948, <http://www.unhcr.ch/udhr/lang/eng.htm> (5 March 2007), Article 2.

⁵⁴ Ratner and Abrams, *op cit*, pp.40-41.

⁵⁵ See United Nations, 'Charter of the United Nations', *loc cit*, Chapter I, Article 2.

Convention is restrictive in some ways, it the only current tool which legally allows countries to intervene in another countries state of affairs, through the UN, to prevent or stop genocide, and ultimately save lives. Through the convention, countries are under obligation to not only stop genocides from occurring within their own states, but also to genocides outside their own states. Ultimately though, under the current system of the UN, member states are to inform the UN, but the final responsibility rests with the UNSC.

Chapter Six: **Conclusion**

Genocides have been occurring throughout history, but in the last hundred years, the will to prevent and punish them has built momentum around the international community. First the Armenian genocide gained widespread recognition garnering enough support to attempt a trial of the perpetrators. Although the attempt failed, it had set in motion the idea that states were responsible for their own citizens' human rights. Over 20 years later the international community again attempted to bring to justice those responsible for the holocaust. The Nuremburg trials were ultimately successful. With the atrocities of the holocaust and the success of the Nuremburg Tribunal, international leaders united to create the Genocide Convention in 1948. Its definition and groups that are protected under it are limited, causing much debate over the years. Much of the debate holds credibility and if introduced to the Convention, would protect more human lives. However in order to prevent and punish genocide in the future, we must work within our current means, and instead push for the UNSC to work according to the mandate given to them.

Part Two: Since Then

Chapter Seven: **Introduction**

Although the Genocide Convention was passed in 1948, it was not used until the 1990s in the tribunal cases of Rwanda and former Yugoslavia. In that time there were numerous genocides, acknowledged by some, unrecognised by others.

Cambodia was one of those genocides that evaded prevention and punishment for a long time. It has only been in recent years that the Khmer Rouge regime under the infamous Pol Pot, has finally been acknowledged and justice is currently in the works. This section looks at four different genocides: Cambodia, Rwanda, former Yugoslavia, and Darfur, Sudan. Each of these have elements of the UNSC dismissing the seriousness of the crimes perpetrated, and holding back from appropriately calling in the Genocide Convention to prevent and punish the genocides.

The Cambodian genocide (1975-1979) came at a time when the world was divided by the Cold War, and the US had overstretched itself during the Vietnam War. These reasons alone explain the inaction of the UNSC. The UN remained relatively silent on Cambodian matters during the Cambodian genocide; it took the Vietnam invasion of Cambodia to finally get a response from the UNSC.

The Rwandan genocide (1994) was fast and furious, capturing the attention of the world. Unfortunately, the Rwandan genocide followed too soon after the Somalian

conflict which again had pushed the US to its extreme. So the Rwandan genocide was left unabated, even with a UN presence that had come before the genocide.

There were two separate genocides over a decade in former Yugoslavia (1990s).

The first genocide was against the Bosnian Muslims by Serbs and Croats, followed by the Albanians in Kosovo, again by Serbs. The international community, like in

Rwanda, was present from the start of the conflict, but the UN treaded carefully.

Russia and China were cautious of intervening, thus prolonging the first genocide.

Again both states showed their reluctance to military intervention to stop the Kosovo genocide, and without a unified UNSC, the North Atlantic Treaty Organisation (NATO) initially stepped up to the military task of ending the genocide.

Finally, Darfur, Sudan is embroiled in a genocide perpetrated by Khartoum and the Janjaweed. The UN and international community has been present trying to negotiate with the different parties. But more needs to be done. Again, both Russia and China have been unwilling to go the distance to stop the genocide.

All these genocides demonstrate that a divided UNSC allows genocide to happen.

The veto power which the five permanent members hold can be threatened or used at any given time under any guise. These genocides were all affected by the power of veto in one way or another, whether directly or indirectly. Unfortunately, the veto power controls world affairs, and despite the international law of the Genocide Convention, clearly overrules.

Chapter Eight: **Cambodia**

In post-colonial times, Cambodia has been affected by a number of conflicts and their consequences. The ultimate conflict though was the Cambodian genocide during the period of Democratic Kampuchea, 1975-1979. Like the genocides previously spoken of, this one was committed by the government of the time, the Khmer Rouge regime under the leadership of Pol Pot. Other similarities include mass deportations and identification clothing. However, targeted groups consisted of ethnic, religious, political, and territorial groups, plus suspected inside traitors. The confusion of targeted groups coupled with then current world affairs meant that the international community's response to prevent or punish the perpetrators has only just come into action. This case study demonstrates the ambiguities of the Genocide Convention and also the weaknesses of the UN as a political entity swayed by the interests of the permanent members in the UNSC.

Following WWII, Indochina was placed under French administration again from its Japanese invaders. Yet, in the post-war era, the world came to be known by two phenomena: decolonization and the Cold War. Cambodia was first affected by decolonization, heavily influenced by the anti-colonialism movement by its neighbour Vietnam. Cambodia won its independence in the early 1950s, but despite this it continued to suffer from contending political movements.¹ Communists were

¹ Eric D. Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton, Oxford: Princeton University Press, 2003), p.146.

heavily suppressed during the late 1950s under Prince Norodom Sihanouk, leading them to flee into the forests.² Two elements helped the success of the Communist Party: the spill over of the Vietnam War in the late 1960s uprooting hundreds of thousands of people, and the highly increased number of educated citizens struggling to find work, increased the number of those willing to join the communists.³ Despite a short interlude of a military coup placing General Lon Nol as the Cambodian leader from 1970 to 1975,⁴ Khmer Rouge finally took control over Cambodia on April 17, 1975.⁵ Cambodia was transformed into Democratic Kampuchea.⁶

Within a short period of time, Khmer Rouge, following Maoist China's 'Great Leap Forward', was attempting to rapidly and radically transform the country even at a faster rate of its communist fore bearers. The goal was to level the class system, introduce a state-planned economy without foreign influence, and focus on '... clear[ing] forests, build[ing] irrigation systems, and vastly increasing the rice crop yield'.⁷ Furthermore, they sought to clean the social system and create a 'fully independent socially and ethnically homogenous Cambodia'.⁸ Thus the regime created a multiplicity of target groups leaving some citizens unwanted from the state for more than one reason.

² Ibid, p.147.

³ Ibid, pp.147-148.

⁴ Ben Kiernan, 'The Cambodian Genocide – 1975-1979', in Samuel Totten, William S. Parsons and Israel W. Charny *Century of Genocide: Critical Essays and Eyewitness Accounts*. 2nd edn. (New York, London: Routledge, 2004), p.341.

⁵ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, (UN Doc. A/53/850: S/1999/231, 16 March 1999), Annex: Report of the Group of Experts for Cambodia established Pursuant to General Assembly Resolution 52/135, p.7, para.9.

⁶ Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, pp.347-349.

⁷ Weitz, *op cit*, p. 152.

⁸ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit*, p.8, para.15.

The first action of the genocide was that of the forced evacuation of the capital Phnom Penh under the invented threat of the American bombing of the city. Around two million were forced out with little respect to age or health.⁹ Hospital patients dragged out onto the streets were left to die, while thousands of others on the journey died due to lack of food, water, and medicinal supplies.¹⁰ The forced population movements were used to break down the middle and upper class system, a strong feature of urban areas. It trimmed away at the foreign presence and influence,¹¹ and it disseminated the then split families into categorised groups to work on communal state-backed agriculture and infrastructure projects. Phnom Penh served as the most dramatic example of forced population movements, but it was to become only one of many.

The Group of Experts attribute the forced labour coupled with the inhumane living conditions as the ‘single largest source of deaths’ of the genocide.¹² Seven days a week, the population was forced to work on these state projects working long hours with insufficient food. The population faced ‘starvation, disease, and physical exhaustion, caused by overwork and inadequate food, medicine, and sanitation’.¹³ In addition, the Khmer Rouge overseers regularly killed thousands who struggled to keep up with the workload, often killing victims’ families as well.¹⁴

⁹ Ibid, p.10, para.20.

¹⁰ Ibid.

¹¹ Forcing the foreign presence out of the country allowed the regime to carry out its genocide without threat of intervention. The international community, for some time was left uncertain of the true nature of the crime.

¹² United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, loc cit, para.23.

¹³ Ibid.

¹⁴ Ibid.

The Khmer Rouge's initial enemy targets to be killed off were former soldiers, police, and other officials from Lon Nol's leadership.¹⁵ Not only were opposing political enemies targeted, but Khmer Rouge also cleansed itself from within intentionally purging Cambodian communists who had been trained in Hanoi, Vietnam.¹⁶ Similarly, those who had been educated in foreign states, aside from Pol Pot's elite French-educated group who led Khmer Rouge, were also marked. To create a unified, communist state, based on principles of a communal lifestyle directed from the state, meant that there could be no political or military opposition, no classes, no ethnic groups or religious groups, and incredibly, even the nucleus family was broken apart. This gave the Cambodian people only one loyalty and one family: the state.

The evacuation of Phnom Penh and other major cities and towns created the first distinguished national targeted groups of ordinary Khmer¹⁷ citizens and other ethnic groups. Citizens from urban areas were labelled as 'new citizens', a threat because they were seen as being educated and westernised. Citizens from rural towns, particularly from previously controlled Khmer Rouge areas of control, were then labelled as 'old citizens' and '... were regarded as true Khmer'.¹⁸ In time, 'new citizens' were afforded opportunities to progress as 'deportees', 'candidates', and

¹⁵ Edward Kissi, 'Genocide in Cambodia and Ethiopia', in Robert Gellately and Ben Kiernan (eds.), *The Specter of Genocide: Mass Murder in Historical Perspective* (Cambridge: Cambridge University Press, 2003), p.311.

¹⁶ Years earlier, the Cambodian, Communist Party of Kampuchea (CPK) had broken away from the Indochina Communist Party because of the Vietnamese domination.

¹⁷ According to the Group of Experts report, including the Khmer Rouge's own national group the Khmer as a protected group by the Genocide Convention, is a complex issue. See United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit*, p.20, para.65.

¹⁸ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (New York: Oxford University Press, 1997), p. 233.

finally ‘full rights citizens’, although this position was not static.¹⁹ This was all part of the cleansing and re-education process to distinguish the willing from the unwilling in the new regime. Moreover, their re-education included ‘... participation in mass meetings at which they listened to lectures and recounted their autobiographies for criticism’.²⁰

Behind the targeting of ethnic groups was the Khmer Rouge view of its past medieval Khmer glory. Under colonial times the French had viewed the Khmer people as morally superior, ‘a sort of Aryan race amongst Asians’²¹, on the other hand, the Vietnamese were seen as an industrious people, and were thus sought after by the French. In 1975 the Vietnamese population in Cambodia totalled 20,000, and by 1979 the Vietnamese population had been completely obliterated.²² The Vietnamese were in traditional terms, the biggest ethnic threat to a pure Khmer regime. Even before the period of Democratic Kampuchea they had also been the targets of forced removal and massacres.²³ Throughout the genocide, the Khmer Rouge government routinely made attacks on the Vietnam border.

The Chinese and Muslim Cham, which along with the Vietnamese constituted the three largest ethnic minority groups in Cambodia in 1975, were also eliminated in large numbers. Chinese citizens, as urban dwellers, were targets, as Kiernan argues, not because of their race but rather because of the conditions and work duties given

¹⁹ Kiernan, ‘The Cambodian Genocide – 1975-1979’, *op cit*, p.347, and Weitz, *op cit*, p.160.

²⁰ Weitz, *loc cit*.

²¹ *Ibid*, p.164.

²² Kiernan, ‘The Cambodian Genocide – 1975-1979’, *op cit*, p.348.

²³ *Ibid*, p.345.

to ‘new citizens’.²⁴ From an original ethnic Chinese population of 430,000, it is estimated that approximately 50 percent were eliminated.²⁵ The Muslim Cham, an ethnic group with a ‘distinct religion, language, and culture’ were attacked first through their associated symbols and customs being disallowed and destroyed, such as the Koran.²⁶ Their strong communities were broken up and any rebellions were severely put down by Khmer Rouge troops. The Muslim Cham 1975 population figured around 250,000, but was whittled down to 90,000 by 1979.²⁷ Other minor ethnic groups included Thai with 8,000 from an original 20,000 perished, Lao with 4,000 from 10,000, and Kola whose original 2,000 population was completely eliminated.²⁸

Alongside the Muslim Cham, which is also considered a religious group, the regime sought to eradicate Buddhism, the most influential religion in Cambodia. The Buddhist monks suffered severely from the orders of Pol Pot that monks were to be defrocked and disbanded, ‘... the most important to fight. They had to be wiped out...’.²⁹ Kiernan suggests that out of Cambodia’s 70,000 monks, less than 2,000 survived.³⁰ Aside from killing off the monkhood, they also destroyed temples and other religious sites and symbols. By 1977 there were no monasteries or monks; Buddhism had effectively been eliminated in a year.³¹ The Group of Experts

²⁴ Ibid, pp. 345-6.

²⁵ Ibid, p.348.

²⁶ Ibid, p.346.

²⁷ Ibid, p.348.

²⁸ Ibid, pp.346, 348.

²⁹ Ben Kiernan, *The Pol Pot Regime: Race, Power, and the Genocide in Cambodia under the Khmer Rouge, 1975-79*. 2nd edn. (New Haven, London: Yale University Press, 2002), pp.55,57. Quote taken from Heng Samrin

³⁰ Kiernan, ‘The Cambodian Genocide – 1975-1979’, *op cit*, p.344. Taken from statistics that show that from 2,680 monks from eight monasteries, only 70 survived.

³¹ Ibid, p.345.

affirmed that the Buddhist monkhood qualified as genocide of a religious group with evidence clearly demonstrating the Khmer Rouge's intent to destroy them.³²

Finally in 1978, towards the end of the regime, the campaign of terror increased. The Eastern Zone bordering Vietnam, where conditions had fared reasonably well in the regime, was attacked by Khmer Rouge troops. There were large scale deportations to the northwest with citizens subjected to wearing blue scarfs to distinguish them. More horrific were the massacres that took place in the Eastern Zone and which continued with the easterners as they made their journey.³³ Mistrust was also abounding within Khmer Rouge itself. Tuol Sleng, the infamous prison in Phnom Penh, dealt with the torture and executions of former Khmer Rouge officials.³⁴ According to Weitz, almost '... one-third of the original cabinet members of Democratic Kampuchea' lost their lives in the purges.³⁵

Different estimates have been given numbering the lives lost during the Cambodian genocide. The UN gives an estimate of one million³⁶; the Group of Experts state one-fifth of the population died;³⁷ the Extraordinary Chambers in the Courts of Cambodia (ECCC) give three million;³⁸ scholar Ben Kiernan suggests the commonly accepted 1.5 million³⁹; whilst others like Edward Kissi and Patrick

³² United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *loc cit*, paras. 63, 64.

³³ Ben Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, p.347, and Weitz, *op cit*, p.168.

³⁴ Weitz, *loc cit*.

³⁵ *Ibid*, pp.168-169.

³⁶ United Nations: Department of Public Information, *The United Nations and Cambodia, 1991-1995* (New York: United Nations, 1995), p.63

³⁷ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit*, p.5, para. 1.1.

³⁸ Extraordinary Chambers in the Courts of Cambodia, 'Introduction to the ECCC: Summary', 26 February 2007. http://www.eccc.gov/kh/english/about_eccc.aspx (5 March 2007).

³⁹ Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, p.349.

Heuveline suggest 1.7 – 2 million⁴⁰ and 1.17 – 3.42 million⁴¹ respectively. The population prior to 1975 figures around 7.9 million.⁴² Lives were intently lost by large scale massacres and individual executions based on unfavourable autobiographies, failing to follow orders, or any other ‘suspicious’ reasons. Heuveline argues that one-third to over two-thirds of the total number of deaths ‘... were the result of direct violence...’.⁴³ Other causes include disease, starvation and malnutrition, and death caused by the conditions of deportations and harsh labour conditions.⁴⁴

Norodom Sihanouk, former Prince of Cambodia, under house-arrest during the genocide, stated that the Khmer Rouge downfall was in their ‘superiority complex’.⁴⁵ In January 1979, Vietnam invaded Cambodia and the Khmer Rouge government was forced into exile. The genocide was brought to an end. Where had been the international community during the genocide? Some argue that the secrecy that shrouded the Khmer Rouge, trapping Cambodians within its borders, and sealing Cambodia off to the world, initially hid the genocide.⁴⁶ By 1978, international awareness of the genocide was growing. A Canadian official described the Khmer Rouge’s actions as: ‘systematically violat[ing] the fundamental human rights of its

⁴⁰ Kissi, *op cit*, p.307.

⁴¹ Patrick Heuveline in Weitz, *op cit*, p.186.

⁴² Kiernan, ‘The Cambodian Genocide – 1975-1979’, *op cit*, p.348, and Weitz, *op cit*, p.186.

⁴³ Patrick Heuveline in Weitz, *loc cit*.

⁴⁴ Ibid, p.165.

⁴⁵ Prince Norodom Sihanouk, *War and Hope: The Case for Cambodia* (New York: Pantheon Books, 1980), p.85.

⁴⁶ Despite the secrecy within Democratic Kampuchea, the US administration was wary of the Khmer Rouge from when it took power. US President Gerald Ford’s Administration had intelligence of a ‘bloodbath’ occurring. But as is discussed further, the Vietnam War had left the administration with no credibility. Samantha Power, *“A Problem from Hell”: America and the Age of Genocide* (New York: Basic Books, 2002), p.108.

citizens in that the repression and the killings are continuing'.⁴⁷ US Senator McGovern went further to call it 'flagrant genocide' and suggested international intervention.⁴⁸ On 21 April 1978, US President Jimmy Carter made an official White House statement using the term 'genocide'. He said:

'America cannot shirk in its duty to condemn the Cambodian Government ... thousands of refugees from Cambodia accused their own Government of destroying hundreds of thousands of inhabitants as a result of the policy of genocide...we support international protests against the policy of this inhuman regime'.⁴⁹

Yet despite acknowledging the actions of the Khmer Rouge as genocide, nothing from the international community, bar Vietnam, was done to stop it.

The Cold War can be blamed for the inaction of the UNSC, but this does not excuse it as the UNSC wasn't inept at taking action towards other states. The UNSC issued a total of 76 resolutions throughout the genocide mainly on matters concerning the Middle East, Africa and new membership; not one resolution concerned Cambodia.⁵⁰ The state was so politically overloaded that it cancelled out any action being taken. Three of the permanent members, the US, USSR, and China had been heavily

⁴⁷ Secretary of State for External Affairs of Canada, Mr. Jamieson, as quoted in United Nations, *Official Records of the General Assembly. Thirty-third Session, Plenary Meetings, 9th Meeting*, (UN Doc. S/PV.2108 (OR), 11 January 1979), p.15, para.152.

⁴⁸ William Shawcross, *The Quality of Mercy: Cambodia, Holocaust and Modern Conscience* (London: André Deutsch, 1984), p.68.

⁴⁹ As quoted in United Nations, *Official Records of the General Assembly. Thirty-third Session, Plenary Meetings, 9th Meeting, loc cit*, para.153.

⁵⁰ See United Nations, *Security Council: Resolutions*. 2007. <http://www.un.org/documents/scres.htm> (30 April 2007), for the full list of UNSC resolutions from 1975 – 1979.

involved in the Indochina region for the past decade. The US had fought hard to “save” Vietnam from the spread of communism. Vietnam’s war effort was supported by the Soviets. Back in 1975 when Khmer Rouge first took control of Cambodia, Vietnamese Communists also took control of Saigon, Vietnam, driving the US out. US policy of the time although unfavourable of Khmer Rouge itself, allowed the independence of Cambodia due to Cambodia’s stance of resisting Vietnam.⁵¹ Also the US was still suffering from anti-war sentiment with public opinion opposed to further intervention in the region.⁵² The US omission to act against the leaders of Khmer Rouge, in a sense provided support for the regime and possible US complicity. On the other hand, Stanton argues that the UN was ‘paralysed by the likelihood of [UNSC] vetoes by the communist powers ... the Soviet Union and ... China’.⁵³

The Vietnamese invasion of Cambodia in early 1979 was not the desired intervention by the majority of the international community. Vietnam argued it was an attack of self-defence, but it was also an attack that backed the new leadership of Cambodian, even Khmer Rouge dissidents.⁵⁴ The genocide under the Khmer Rouge was over, but not without controversy. On 15 January 1979, the UNSC voted on a draft

⁵¹ It is important to note that at this point the US was still to ratify the Genocide Convention.

⁵² US media was rapidly shying away from stories of conflict and communism in Indochina. Reports of the genocide were also not taken too seriously as they were seen as ‘unconfirmed reports’ from refugees, who had fled. The Khmer Rouge’s response was to these reports were to claim they were criminals. Scholars such as well known Noam Chomsky, challenged government intelligence and media reports as faulty and pretext to a US invasion. See Power, *op cit*, pp.108-113.

⁵³ Gregory H. Stanton, ‘The Cambodian Genocide in International Law’, in Ben Kiernan (ed.), *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community* (New Haven: Yale University Southeast Asia Studies, 1993), p.155. The intricacies of these three states concerning the Indochina region are: The US and USSR fought a proxy war against each other in Vietnam prior to Democratic Kampuchea, the US failed in its objective and consequently left the region. The Khmer Rouge was opposed to the Vietnamese communists thus sought guidance from China. The Sino-Soviet relationship was at that stage strained.

⁵⁴ Known as the People’s Revolutionary Council of Kampuchea, headed by Heng Samrin.

resolution that called upon the “foreign forces” of Cambodia to withdraw.⁵⁵ Further it reaffirmed principles of “sovereignty, territorial integrity and political independence”, and “non-interference” for all states.⁵⁶ Finally Cambodian politics firmly entered the debates of the UNSC in which the Council was prepared to make a stand.

Of the permanent members, the most vocal were the Soviets and China, both with diametrically opposing views. The Soviet representative in the UNSC described the Khmer Rouge as a “criminal regime” who committed “monstrous crimes” against their own people.⁵⁷ The Soviet Union took the stance to veto the draft resolution, unwilling to protect the repressive regime that had committed genocide, and declared the Khmer Rouge as no longer the legitimate government.⁵⁸ On the other hand, the Chinese representative called the Soviet’s views as “despicable”, “preposterous”, and accused the USSR and Vietnam of trying to provide a “puppet organisation” as the new government of Cambodia.⁵⁹ He even went as far as comparing the Vietnamese tactics to Nazi Germany during WWII, ‘[t]he only difference is that it is even more flagrant and ignominious than Hitler’.⁶⁰ China was clearly strongly opposed to any action against the Khmer Rouge. As a permanent member, such a strong opinion backed by great power such as the veto power is a threat to victims of genocide, for it can be the means of preventing necessary actions to stop genocide.

⁵⁵ United Nations, *Draft Resolution/ Bangladesh, Bolivia, Gabon, Jamaica, Kuwait, Nigeria and Zambia*, (UN Doc. S/13027, 15 January 1979), p.1, para.2.

⁵⁶ Ibid, paras.1,3.

⁵⁷ United Nations, *Official Records of the General Assembly. Thirty-third Session, Plenary Meetings, 9th Meeting*, *op cit*, pp.4, 14, paras.41, 146.

⁵⁸ Ibid, p.15, para.149. Soviet representative stated that 2-3 million Cambodians had died. However, it can also be observed that in was in the Soviet’s best interest to support Vietnam.

⁵⁹ Ibid, p.4, para.46; p.5 para.50.

⁶⁰ Ibid, p.10, para.100.

The US representative was the last permanent member of the UNSC to comment on the issue. The US response was far more restrained stating that Khmer Rouge was legitimate inasmuch as the UNGA recognised them as such. Further the representative stated that, '[r]egardless of what we think about the situation in Democratic Kampuchea [and I doubt whether the Council is prepared to make any judgements about what is going on] ... We make no judgements one way or the other'.⁶¹

Representatives from Cambodia⁶² and Vietnam were also permitted to speak. Prince Norodom Sihanouk, the Cambodian representative at that particular meeting falsely reported of Cambodia's "economic upswing" and abundant agriculture that enticed the Vietnamese to invade.⁶³ He also quoted statements from representatives from the US, Japan, Kuwait, Sweden, Colombia, and Australia, who all rebuked the Vietnam invasion.⁶⁴ Prince Norodom Sihanouk's comments were supported by the Chinese representative.⁶⁵ Finally the Vietnamese representative, Mr Ha Van Lau defended his country by referring to the attacks on the Vietnamese border which had occurred during the period of Democratic Kampuchea.⁶⁶ Speaking of the genocide he described the state of Cambodia as a 'living hell', thus the oppression had brought

⁶¹ Ibid, p.6, para.59.

⁶² The Soviet's wanted the UNSC to allow the new Cambodian government to speak, however the motion was denied.

⁶³ United Nations, *Official Records of the General Assembly. Thirty-third Session, Plenary Meetings, 9th Meeting, op cit*, p.7, para.77.

⁶⁴ Ibid, pp.8-9, para.88.

⁶⁵ Ibid, p.10, para.97.

⁶⁶ Ibid, p.12, para.116.

about a struggle from within.⁶⁷ Lastly, he claimed that the change had come at the delight of Cambodians.⁶⁸

Of course any attack upon another state is a cause for legitimate concern. But in this particular case whereby the Khmer Rouge government had so appallingly treated their citizens to the extent that genocide had occurred, it is surprising that the majority of the members in the UNSC were more than willing to continue backing them as the legitimate government of Cambodia. There is no doubt that members of the UNSC could have responded much better to the situation in 1979 than it did. The response was, and is so significant in terms of genocide prevention. Those states that backed the Khmer Rouge fought on the grounds of its sovereign right of non-intervention. But the reality was that genocide had taken place under the Khmer Rouge regime which is also a matter of international concern and which the UNSC is primarily responsible for preventing and punishing if the state fails to take action to stop it. The debate then becomes an issue between state sovereignty versus individual human rights. Both the Vietnam and the UNSC erred according to international law. In a sense the UNSC was condoning the genocide and were prepared to forgo their responsibility according to the Genocide Convention.

Unfortunately, the international community would continue to support the Khmer Rouge leaders for over a decade. They were internationally acknowledged as the only legitimate Cambodian government; moreover, they represented Cambodia in

⁶⁷ Ibid, p.13, paras.130-132.

⁶⁸ Ibid, p.13, para.134.

the UN until 1992.⁶⁹ Furthermore, trials for Pol Pot and Ieng Sary in 1979 by the newly established People's Republic of Kampuchea, found both the accused guilty of genocide, despite both being absent from the trials. However, the trials fell short of being taken seriously within the international community with the Group of Experts report describing the response at the time as mere show trials with no regard for due process. Further, the outside forces within the international community that kept the Khmer Rouge in the UN also ensured that no action was taken against the Khmer Rouge.⁷⁰

Throughout the 1980s the UN continued to put pressure on the Vietnamese to withdraw. Furthermore, the UN accused Vietnam of genocide within Cambodia.⁷¹ British journalist William Shawcross, who was first agreeable to these claims, later revoked them as Western propaganda against Vietnam.⁷² He also claimed that 'for the overwhelming majority of the Cambodian people the invasion meant freedom'.⁷³ During the mid-1980s, a small number of international organizations started to take

⁶⁹ Ben Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, p.350.

⁷⁰ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit*, p.14, para.43.

⁷¹ United Nations, *Letter Dated 80/03/12 From the Permanent Representative of Democratic Kampuchea to the United Nations Addressed to the Secretary-General*, (UN Doc. A/35/132: S/13841, 13 March 1980), Annex: The Situation in Kampuchea: International Covenants on Human Rights, p.3.

⁷² Shawcross, *The Quality of Mercy: Cambodia, Holocaust and Modern Conscience*, *op cit*, p.370. Shawcross explains that in mid-1979 a few international agencies were invited to Cambodia for a short and restricted visit. Prior to this, it was reported that a severe famine threatened the lives of millions. The Vietnamese were accused of mismanagement of international humanitarian aid. After the agencies visit, they agreed affirmatively to the reports. Not long after, Vietnam again invited these agencies back to investigate the situation without the former restrictions. New reports were given that highlighted food shortages, but were clear to affirm that there was no famine. See pp.370-373.

⁷³ *Ibid*, p.78.

the focus off the Vietnamese invasion calling for the investigation of crimes during Democratic Kampuchea.⁷⁴

After a decade of talks in Cambodia between the different factions⁷⁵ supported by the UN, Vietnam finally withdrew in 1989 under the Paris Peace Agreements.⁷⁶ The UN's first mission in Cambodia was to run free elections in May 1993 under the United Nations Transitional Authority in Cambodia (UNTAC).⁷⁷ It was now 'the duty of the international community to prevent the recurrence of genocide in Cambodia'.⁷⁸ Despite the growing public and political attention to make restitution with Cambodia, Pol Pot and his followers were still safely hidden in the outskirts of Cambodia. The international community did not seek to bring him or others to justice. The Khmer Rouge, which had maintained control of parts of Cambodia throughout the Vietnam occupation, was free to stand in the elections, although they eventually boycotted the elections and proved a disturbance in the lead up to the elections, putting fear into the Cambodians citizens, and killed both Vietnamese and UN peacekeepers.⁷⁹

The successful election was far from punishing the Khmer Rouge leaders and other perpetrators of the genocide. The international community, now in open agreement of the genocide, advised the new Cambodian government that they would back any

⁷⁴ Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, pp.350-1.

⁷⁵ The Khmer Rouge were always held as equals in the negotiations.

⁷⁶ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *loc cit*, para.40.

⁷⁷ *Ibid*, para.41.

⁷⁸ UN Subcommission on Human Rights, 1991, cited in Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, p.352.

⁷⁹ *Ibid*, p.353, and United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *loc cit*.

attempts of justice only if Cambodia chose to go down that path.⁸⁰ At first, the new coalition government outlawed Khmer Rouge on 7 July 1994,⁸¹ but finally on 21 June 1997, Cambodia submitted a request for UN assistance for the trials of the Khmer Rouge acknowledging the assistance which the UN had provided for Rwanda and former Yugoslavia.⁸² Over twenty years had passed since the beginning of the Khmer Rouge regime.

A Group of Experts was formed by the request of then Secretary-General Kofi Annan. The Group of Experts found that Khmer Rouge had committed genocide, crimes against humanity, forced labour, torture, and crimes against internationally protected persons.⁸³ The Cambodian and Thailand governments agreed to apprehend the criminals in their territory for the purpose of trials. They recommended a completely international trial in March 1999⁸⁴; however the Cambodian government desired an international-assisted Cambodian trial.⁸⁵ The disagreements between the UN and the Cambodian government concerning the national-international balance of the trials, and different factors of the draft law led the UN to withdraw from negotiations January 22, 2002. It took until January 2003 for negotiations to resume after much persuasion and support from the Human

⁸⁰ Kiernan, 'The Cambodian Genocide – 1975-1979', *op cit*, p.352.

⁸¹ Extraordinary Chambers in the Courts of Cambodia, *Law on the Outlawing of the "Democratic Kampuchea" Group*.
http://www.eccc.gov.kh/english/cabinet/legislation/1/Law_to_Outlaw_DK_Group_1994.pdf (30 April 2007).

⁸² United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit*, p.6, para.5.

⁸³ *Ibid*, p.2.

⁸⁴ *Ibid*, p.38, para.132.

⁸⁵ *Ibid*, p.2, and Extraordinary Chambers in the Courts of Cambodia, 'Chronology of Establishment of ECCC: Chronology from 1997-2005'. 26 February 2007.
<http://www.eccc.gov.kh/english/backgroundECCC.aspx> (5 March 2007).

Rights Commission, Japan, France, and the Association of South East Asian Nations (ASEAN), with the approval of the UNGA.⁸⁶

On 6 June 2003, the Agreement that established the trials was approved by both parties, the UN and the Royal Government of Cambodia.⁸⁷ Effectively called the Extraordinary Chambers in the Courts of Cambodia (ECCC), it is a 'hybrid' court that is part of the Cambodian court system but uses both Cambodian and international law.⁸⁸ The Cambodian government fought for the 'hybrid' court instead of the international tribunals of Rwanda and former Yugoslavia, due to the need for national reconciliation and justice within Cambodia.⁸⁹ The Group of Experts report found that although it would be desirable for trials to be held in Cambodia, felt that Cambodia's legal foundation was too shaky. There was a lack of trained judges, lawyers, and investigators, and even amongst the trained, it was hard to find personnel without prejudice. And the culture lacked respect for due process, to actually have it there. They had suggested a city and state within the Asia-Pacific region to maintain its significance in Cambodia.⁹⁰ However, the Agreement

⁸⁶ Extraordinary Chambers in the Courts of Cambodia, 'Chronology of Establishment of ECCC: Chronology from 1997-2005', *loc cit.* Kofi Annan had stated that in order for the UN to continue with negotiations, he would need either a clear mandate from the UNGA or UNSC. Resuming talks was conditional in that Cambodia had the responsibility for the trials with the help of the UN or otherwise, and that it needed to ensure international standards of justice.

⁸⁷ 'Agreement Between the United Nations and the Royal Court of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea.' 6 June 2003.
http://www.eccc.gov/kh/english/cabinet/agreement/5/Agreement_between_UN_and_RGC.pdf (31 January 2007).

⁸⁸ United Nations Assistance to the Khmer Rouge Trials, 'UNAKRT Mission and Scope' 30 January 2007. http://www.unakrt-online.org/01_home.htm (31 January 2007).

⁸⁹ Extraordinary Chambers in the Courts of Cambodia, 'Introduction to the ECCC: Summary', 26 February 2007. http://www.eccc.gov/kh/english/about_eccc.aspx (5 March 2007).

⁹⁰ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit.*, pp.35-37

provided Cambodia with the UN assistance it needed to help meet international standards of justice within its own country.

Since 2003 to the present time (May 2007), Cambodia, the UN, and the international community have been negotiating the costs of such trials, facility use, selecting and training international and Cambodian judges, prosecutors, and lawyers, and agreeing on international standards for the trials.⁹¹ Finally, in 2007, the ECCC is set to begin its first trials which are expected to last for three years.⁹² Its mandate under the Agreement is to try senior leaders of Democratic Kampuchea and those most responsible for serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia.⁹³ In particular, its jurisdiction includes genocide as defined in the Genocide Convention 1948, crimes against humanity as defined in the Rome Statute of the International Criminal Court 1998, and grave breaches of the 1949 Geneva Conventions and other crimes in Chapter II of the law on the Establishment of the ECCC, 10 August 2001.⁹⁴

Pol Pot died in 1998 thus escaping any international punishment for committing the international crime of genocide. Ieng Sary, his deputy, was given a formal pardon in

⁹¹ Extraordinary Chambers in the Courts of Cambodia, 'Chronology of Establishment of ECCC: Chronology from 1997-2005', *loc cit*, and 'Highlights'. 26 February 2007. <http://www.eccc.gov/kh/english/news.list.aspx> (5 March 2007).

⁹² Extraordinary Chambers in the Courts of Cambodia, 'View FAQ: Why Has it Taken So Long?' (26 February 2007). <http://www.eccc.gov/kh/english/faq.list.aspx> (5 March 2007).

⁹³ 'Agreement Between the United Nations and the Royal Court of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea.', *op cit*, p.1, preamble.

⁹⁴ *Ibid*, pp.7-8, Articles 9, 12.1.

1996 for the sentence he was served in 1979.⁹⁵ It is up to the ECCC to determine the status of the pardon, deciding if he is able to be tried for genocide again.⁹⁶ Limiting the number of persons to stand accused is in respect of maintaining peace in Cambodian civil society. Too large a number of persons to be tried under the ECCC could get out of hand and disrupt the lives of many of those less responsible who have integrated back into Cambodian society.⁹⁷ Further, it is also limited to the crimes during the period from 17 April 1975 to 6 January 1979. Although there was other significant conflicts in Cambodia and amongst neighbouring states, before and after Democratic Kampuchea, focusing in on the genocide highlights its importance in magnitude of international crimes.⁹⁸

In respect for intervention, the Cambodian genocide came after the Genocide Convention. Cambodia was party to the Convention,⁹⁹ thus they understood that all signatory countries had the obligation to prevent or punish those responsible of perpetrating genocide. Effectively, Cambodia opened itself up to international intervention if it did commit genocide.¹⁰⁰ The UNSC had the ultimate responsibility to secure peace and security, but the political tension between the permanent member

⁹⁵ Extraordinary Chambers in the Courts of Cambodia, 'Royal Decree (Reach Kreat), 14 September 1996, Phnom Penh'. 2007.

http://www.eccc.gov.kh/english/cabinet/legislation/2/pardon_for_Ieng_Sary.pdf (30 April 2007), Cambodia, *Ieng Sary Pardon*, (Doc. NS/RKT/0996/72), p.1, Article 1.

⁹⁶ Extraordinary Chambers in the Courts of Cambodia, 'View FAQ: Why Has it Taken So Long?', *loc cit*.

⁹⁷ United Nations, *Identical Letters Dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council*, *op cit*, pp.31, para.103.

⁹⁸ 'Agreement Between the United Nations and the Royal Court of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea.', *loc cit*.

⁹⁹ Although Cambodia became party to the Genocide Convention prior to the Khmer Rouge gaining power, all succeeding governments in Cambodia since the time that the Convention was signed and ratified were and are still required to uphold the Convention.

¹⁰⁰ See Office of the High Commissioner for Human Rights, 'Convention on the Prevention and Punishment of the Crime of Genocide', *loc cit*, Title, Articles 1,4, and United Nations, 'Charter of the United Nations', *loc cit*, Chapters IV, V.

states overrode their obligation. How is it possible that the international law to prevent and punish genocide was ignored by the powers-that-be? Obviously the ultimate veto power of the UNSC permanent members is greater than its own good.

Almost 30 years have passed since the end of the Cambodian genocide, unfortunately the Cambodia and the world still wait for the trials of those still alive from Khmer Rouge during the period of Democratic Kampuchea. The world stood by as over a million Cambodians died from the policies of their own government. Overshadowed by other world events, the Cold War, Cambodia was betwixt and between the main powers thanks to its communist ideology and strained relationship with Vietnam. The Cambodian genocide was a tragedy, and yet like the Armenian genocide, the wounds are still raw due to the lack of international action that persisted for over 20 years.

Chapter Nine: **Rwanda**

The 1994 Rwandan genocide depicted the clearest case of genocide since the holocaust. Over the short course of 100 days, between April and July, 800,000 men, women and children were slaughtered. The UN had been aware of the impending genocide in Rwanda before it happened, and there was strong international consensus of its nature throughout its duration. Both the UN Secretariat and the power of veto can be blamed for the omission of prevention and the initial delayed punishment of the genocide. In the aftermath the Security Council determined the acts as genocide and the International Criminal Tribunal for Rwanda (ICTR) was organised for the punishment and justice of the genocide perpetrators.

Historically, the conflict between the Hutus and Tutsis can be directly linked to Rwanda's colonial period. From 1897, Germany and then Belgium administered over Rwanda. Both Hutu and Tutsi shared the same language, culture, clan names, and customs.¹ However, following common theories of the time on race, the colonizers, particularly the Belgians, favoured the taller and slimmer features of the Tutsi. Theories were raised that placed the "superior" Tutsis as being conquerors from Ethiopia or Egypt, nation-states closer to Europe.² In truth, the Tutsi dominated leadership positions including the monarchy in pre-colonial times, nevertheless, Melson argues that the colonizers '... accelerated the process and gave it a racist

¹ René Lemarchand, 'The Rwanda Genocide', in Samuel Totten, William S. Parsons, and Israel W. Charny, *Century of Genocide*. 2nd edn, (New York, London: Routledge, 2004), p.396.

² Robert Melson, 'Modern Genocide in Rwanda: Ideology, Revolution, War, and Mass Murder in an African State', in Robert Gellately and Ben Kiernan (eds.), *The Specter of Genocide: Mass Murder in Historical Perspective* (Cambridge: Cambridge University Press, 2003), p.327.

edge'.³ From the arrival of the colonizers, Tutsi were absorbed into a life of privilege and the idea of their superiority.

Trapped in a cycle of subordination, it is clear the Hutus resented the Tutsi. But following WWII, a new generation of colonial administrators and Catholic Church leaders sought to rectify the blatant inequality between the two groups, and to establish a system of democracy. The momentum for the repealing of Hutu injustices led to the violent Hutu uprising in 1959, in which they gained control of the state. By 1962, Rwanda was granted full independence.⁴ Between the 1959 Uprising and 1994 genocide, Tutsis were the target of continual violence and oppression with masses of the population fleeing to neighbouring states. In 1973, Juvénal Habyarima, the army's chief of staff, staged a coup inserting himself as the president of Rwanda, which brought further persecution for the Tutsi.⁵ Following an economic crisis in the 1980s, and bowing to international pressure, Habyarima announced political liberal changes to appease Tutsi, but this was 'too little, too late'.⁶

On October 1, 1990, the Rwandan Patriotic Front (RPF), based in Uganda and dominated by Rwandan Tutsi refugees and posterity, invaded Rwanda.⁷

Unfortunately their attacks garnered the reprisal of deadly attacks on hundreds of Tutsis, and the RPF was forced back to the borderline. During this time, the large scale mass-media propaganda campaign against the Tutsi began. Lists of targeted

³ Ibid.

⁴ Ibid, p.331.

⁵ Ibid, p.332, and Jackson Nyamuya Maogoto, *War Crimes and Realpolitik: International Justice from World War I to the 21st Century* (Boulder, London: Lynne Rienner Publishers, 2004), p.180.

⁶ Melson, *op cit*, p.333.

⁷ Ibid.

individuals circulated, containing both Tutsi and moderate Hutu. In 1990 radical Hutu espoused the “Ten Commandments of the Hutu”, to segregate the two ethnic groups.⁸ Hutu politicians were also reported to make such statements as ‘We have to act. Wipe [the Tutsi] all out’.⁹ The propaganda mixed with the already existent ethnic tensions, made ready the conditions for the genocide.

In the ensuing years leading up to the genocide, the government of Rwanda and the RPF met in a series of talks to establish peace. However, numerous agreed ceasefires were violated which eventually led to UN involvement. In June 1993, both parties requested a force for overall security. On 4 August 1993, the Arusha Peace Agreement set up the Neutral International Force (NIF).¹⁰ By October, the United Nations Assistance Mission for Rwanda (UNAMIR), a peacekeeping force of 2,548, was set up under Resolution 872 (1993) to monitor the Arusha Accords and the security situation for the upcoming elections.¹¹ UNAMIR was poorly resourced with second-hand vehicles from UNTAC with less than a third of the 300 usable, and inadequate medical supplies.¹² Despite the UN presence, tensions and conflict between the two ethnic groups continued and plans of the Tutsis extermination were designed. On 6 April 1994, President Habyarima’s plane was shot down after returning from peace talks with the RPF in Arusha, Tanzania. Both he and the

⁸ Samantha Power, *“A Problem from Hell”: America and the Age of Genocide* (New York: Basic Books, 2002), pp.338-9.

⁹ Ibid, p.340.

¹⁰ United Nations. *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*. (UN Doc. S/1999/1257. 16 December 1999), p. 6.

¹¹ United Nations. *Resolution 872 (1993)*. (UN Doc. S/RES/872 (1993). 5 October 1993). Major General Dallaire, the UN Commander of the peacekeeping forces in Rwanda had initially asked for 5,000 but was forced to reduce that number due to the US’s reluctance to be involved in another peacekeeping mission. Power, *op cit*, pp.340-1.

¹² Ibid, pp342-343.

President of Burundi who was accompanying him died. This event signalled the beginning of the genocide.

The genocide was fairly simple in comparison with the Cambodian case; there was really only one target, the Tutsi and any Hutu who sympathised with them. However the list of perpetrators is bewildering. The genocide was committed by militia, armed forces, and most alarmingly, civilians. It began in Kigali as a “very well-planned, organised, deliberate and conducted campaign of terror initiated principally by the Presidential Guard’ with ethnicity as one of the elements of the killings.¹³ It soon spread everywhere. The mass media, especially radio, was used effectively to “inform” citizens of current affairs. The propaganda on Radio stations like government-backed Radio Milles Collines, accused all Tutsi as being against Hutu, claiming they were trying to empower themselves again. The radio propaganda also invented Tutsi attacks on Hutu, encouraging Hutu to get the Tutsi before they the Tutsi got them. Aside from the strong participation of the Rwandan army and Hutu militia, ordinary civilians turned against their neighbours, church congregations, and even family members. Tens of thousands of ordinary citizens used ‘...machetes, clubs, hoes, or other farming implements...’.¹⁴ Different reasons have been given as to why so many of the general public became so cruelly involved, some conclusions are that they were following authoritative directives, even that given by the radio stations; and the historical misconceived ideas of Tutsi.¹⁵ Reasoning aside, the Rwandan genocide stands out for two reasons, its speed, and the participants.

¹³ Major-General Dallaire in *ibid*, p.349.

¹⁴ Melson, p.334.

¹⁵ *Ibid*. As explained by Liisa Malkki, Tutsi were foreign invaders intent on controlling the Hutu and stealing their land.

Eight months before the genocide, on 11 August 1993, the Special Rapporteur on Human Rights on extrajudicial, summary, or arbitrary executions reported of massacres,¹⁶ death threats and “political assassinations”,¹⁷ and the sudden renewal of the death penalty to hundreds of prisoners¹⁸ attributed to human rights violations. The perpetrators were acknowledged as being the Rwandese Army Forces (FAR)¹⁹, local government officials, other government officials, political party militias, clandestine or “death squads”, private individuals, the RPF, as well as the lack of the rule of law, and the media propaganda. Finally the Special Rapporteur ‘... question[ed] whether the massacres described above may be termed genocide’, and continued by saying, ‘It is not for the Special Rapporteur to pass judgement at this stage, ...Rwanda acceded to the Convention on the Prevention and Punishment of the Crime of Genocide on 15 April 1975’. Furthermore, Article II of the Convention is quoted followed by,

‘The cases of inter-communal violence brought to the Special Rapporteur attention indicate very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, have been targeted solely because of their membership of a certain ethnic group, and for no other objective reason.’²⁰

¹⁶ United Nations, *Extrajudicial, Summary or Arbitrary Executions*, (UN Doc. E/CN.4/1994/ADD.1, 11 August 1993), Addendum: Report by Mr. B. W. Ndiaye, Special Rapporteur, on his Mission to Rwanda from 8 to 17 April 1993, p.10, para.28.

¹⁷ Ibid, para.29.

¹⁸ Ibid, para.30.

¹⁹ FAR had been through a rapid campaign process since October 1990 increasing the forces from 5,000 to 40,000. The new recruits had been under trained causing further problems. See *ibid*, p.11, paras.33-36.

²⁰ Ibid, p.22, para.79.

The report clearly highlighted the impending genocide by describing the acts, target group (which conformed with the Genocide Convention), and the intent.

The on-going conflict increasingly became a matter of concern for the UNSC.

Resolution 846 (1993) on 22 June 1993, established the United Nations Observer Mission Uganda-Rwanda (UNOMUR) to ‘...monitor the Uganda/Rwanda border to verify that no military assistance reache[d] Rwanda,...’.²¹ In addition, the above mentioned UNAMIR was established on 5 October 1993;²² and UNAMIR was provided an early deployment of the second battalion on 6 January 1994.²³ Despite this, plans for far more vicious, systematic, and widespread massacres continued unabated. Further the UNSC was determined that UN support for Rwanda was dependent on Rwanda’s contributions for establishing peace and security, and their implementation of the Arusha Peace Agreement.²⁴

Again, on 11 January 1994, under Canadian Major General Dallaire, Commander of UNAMIR, informed the Department of Peacekeeping Operations (DPKO) at UN headquarters in New York, that he had been: ‘...put in contact with informant by very very [sic] important government politician. Informant is a top level trainer in the cadre of interhamwe – armed militia of MRND’.²⁵ The coded cable detailed how the aims of the MRND were to provoke RPF to start a civil war, provoke the Belgian

²¹ United Nations, *Resolution 846 (1993)*, (UN Doc. S/RES/846 (1993), 22 June 1993), p.2, para.3.

²² United Nations, *Resolution 872 (1993)*, *loc cit.*

²³ United Nations, *Resolution 893 (1994)*, (UN Doc. S/RES/893 (1994), 6 January 1994), p.1, para.1.

²⁴ For the official UNSC view see *ibid*, p.2, para.3. For examples of comments by member states see United Nations, *Security Council, 49th Year: 3326th Meeting, Thursday 6 January 1994, New York* (UN Doc. S/PV.3326, 6 January 1994), p.11, (Mr. Merimee, France), and United Nations, *Security Council, 49th Year: 3358th Meeting, Tuesday 5 April 1994, New York* (UN Doc. S/PV.3358, 5 April 1994), p.6 (Mr. Merimee, France, and Mr. Inderfurth the US).

²⁵ Dore Gold, *Tower of Babel: How the United Nations has Fuelled Global Chaos* (New York: Crown Forum, 2004), pp.240-1, para. 1.

troops to withdraw, assassinate deputies.²⁶ The informant also confirmed a direct link between the chief of staff RGF and president of MRND for financial and material support.²⁷ More directly concerning an intended genocide, the cable continues: ‘...Since UNAMIR mandate he has been ordered to register all Tutsi in Kigali. He suspects it is for their extermination. Example he gave was that in 20 minutes his personnel could kill up to 1000 [sic] Tutsis’.²⁸

Both the report and cable detailed above gave the UN the information needed to plan a prevention strategy to the genocide. On the contrary however, Dallaire was ordered not to take action in investigating the matter further but to take the information to the US, French, and Belgian embassies. Any action taken would go beyond the mandate given to UNAMIR.²⁹ The orders were given from within the secretariat not the UNSC; the different sources of information detailing the beginnings of the genocide were not shared between the separate UN agencies highlighting the poor communication between the Secretariat and UNSC. The collective reports given prior to the genocide clearly show what was to follow, unfortunately the pieces of the puzzle were pieced together too late. The consequences as we know it were dire, nearly a million people died. The US was, as stated before, reluctant to get involved due to failing peacekeeping missions in Somalia and Bosnia. But there was also the hope that the peace process would prevail. Prevention to the stop the “crime of all crimes” was overruled by the US’s

²⁶ Ibid, para. 2.

²⁷ Ibid, para.4.

²⁸ Ibid, para.6.

²⁹ Ibid, p.139.

fear of intervention attempting to stay away from the ‘Mogadishu line’ and remain neutral.

In mid-February, the UNSC issued a statement asserting that the UNSC was concerned by the delays in Rwanda in establishing a transitional government according to the Arusha Peace Agreement.³⁰ It stated that these delays were having adverse effects to the humanitarian situation in Rwanda.³¹ On the 5 April 1994, the day prior to President Habyarima’s death, the UNSC, by a unanimous vote, decided to limit the extension of UNAMIR’s mandate, as a response to the lack of progress in Rwanda.³²

As of 6 April 1994, Rwanda experienced the crime of all crimes – genocide. On 7 April, the UNSC was quick to release a statement of their disturbance of the tragic deaths of the Presidents of Burundi and Rwanda.³³ It also acknowledged that, ‘there [had] been considerable loss of lives, including the deaths of Government leaders, many civilians and at least ten Belgian peace-keepers as well as the reported kidnapping of others’.³⁴ However such recognition of the escalating violence did not necessarily mean that the UNSC or individual member states sought ways to swiftly stop the violence. The US continued to be unwilling to act as the genocide played out. First, the Clinton Administration was unwilling to term the events as genocide on the basis that once it was termed as such, adequate action would need to be

³⁰ United Nations, *Statement by the President of the Security Council* (UN Doc. S/PRST/1994/8, 17 February 1994), p.1.

³¹ Ibid.

³² United Nations, *Resolution 909 (1994)*, (UN Doc. S/RES/909 (1994), 5 April 1994).

³³ United Nations, *Statement by the President of the Security Council* (UN Doc. S/PRST/1994/16, 7 April 1994), p.1.

³⁴ Ibid.

taken.³⁵ Britain supported this view.³⁶ Thus the UNSC was stalled in any attempts to action the Genocide Convention due to the powers of two permanent member states. Further, after Belgian soldier casualties, the Belgians withdrew from UNAMIR with the support of the US who called for a full UN withdrawal.³⁷ Instead, the force was reduced to a minimum level to 503 before the end of April, 233 more than the UNSC had decided.³⁸ In conjunction with this reduction, UNAMIR's role was also adjusted to '...act as an intermediary between the parties to help establish an agreement', and to assist in humanitarian operations.³⁹ The Belgians and the UN were playing right into the heart of the Hutu desires.

One week on from Resolution 912 (1994), the UNSC again released a statement that defined the massacres in Rwanda as "systematic" and '...in areas under the control of members or supporters of the armed forces of the interim Government of Rwanda'.⁴⁰ It also made reference to the fact that killing members of an ethnic group with the intention of destroying in whole or in part was a crime under international law.⁴¹ It also recognised that the possibility of the conflict spilling over into other neighbouring States was a big threat.⁴² The UNSC had enough information (and willingly stated this information), to strengthen its involvement to stop the genocide, nevertheless UNAMIR would continue to struggle for some time.

³⁵ Power, *op cit*, pp.359-361.

³⁶ Ibid, p.361.

³⁷ Ibid, p.367.

³⁸ Ibid, p.369.

³⁹ United Nations, *Resolution 912 (1994)*, (UN Doc. S/RES/912 (1994), 21 April 1994), p.2, para.8 (a),(b).

⁴⁰ United Nations, *Statement by the President of the Security Council*, (UN Doc. S/PRST/1994/21, 30 April 1994), p.1.

⁴¹ Ibid.

⁴² Ibid.

Dallaire pushed for more help from the UN requesting an additional 5,000 troops, and a new mandate, transitioning it from peacekeeping (Chapter VI) to peace enforcement (Chapter VII).⁴³ In the middle of May, the US finally agreed to a version of Dallaire's proposal. Resolution 918 (1994) provided UNAMIR with up to 5,500 troops; it accepted that the troops could take action for self-defence, defence of humanitarian relief, or at risk civilians; and the resolution also placed an arms embargo in Rwanda.⁴⁴ But troops from other countries were not forthcoming, whilst the US was busy arguing the costs of equipping and maintaining such a force. It took until July for the 50 armoured personnel carriers to arrive in Rwanda. Meanwhile, France took the initiative to set up a "safe zone" in the southwest⁴⁵ until UNAMIR II arrived.⁴⁶ But it was neither the French, nor UN who stopped the genocide, but rather the RPF. The RPF seized all but the French zone, and on 19 July the 'RPF government of national unity was sworn in'.⁴⁷ Hutu fled into

⁴³ Power, *op cit*, pp.377-378.

⁴⁴ United Nations, *Resolution 918 (1994)*, (UN Doc. S/RES/918 (1994), 17 May 1994), pp.3, paras.4,5; p.4, para.13. The resolution provided an interesting statement from the Rwandan representative, Mr. Bicomumpka. In his comments he stated that the international community had the Rwandan conflict all wrong in which he then blamed the Tutsi and RPF for the current situation. He argued that the Tutsi had dominated the Hutu for four centuries and were trying to disrupt Rwanda's democracy and regain power. He questioned whether the atrocities were animal instinct or the instinct to survive. Further he claimed that the interim Government was trying to pursue a cease-fire and was using the radio as a tool to broadcast peace. Although he agreed with enlarging UNAMIR (for the purpose of stopping RPF), he voted against Section B of Resolution 918 (1994) in favour of an arms embargo on Uganda instead. The New Zealand representative, Mr. Keating, followed by Sir David Hannay from Britain remarked on their regret for comments made by the Rwandan representative, particularly because his "interim Government" did not represent a legitimate State, and the "shameful distortion of the truth." See United Nations, *Security Council, 49th Year: 3377th Meeting, Monday 16 May 1994, New York*, (UN Doc. S/PV.3377, 16 May 1994), pp.2-6, 11-12.

⁴⁵ United Nations, *Resolution 929 (1994)*, (UN Doc. S/RES/929 (1994), 22 June 1994). "Operation Turquoise" was only ever intended to be an interim solution which needed to be completely neutral to avoid worsening the situation or undermining UNAMIR's position. Its goal was purely humanitarian and was to cover all costs for the operation. However the risks meant that Brazil, China, New Zealand, Nigeria, and Pakistan abstained from voting. See United Nations, *Security Council, 49th Year: 3392nd Meeting, Wednesday 22 June 1994, New York*, (UN Doc. S/PV.3392, 22 June 1994).

⁴⁶ UNAMIR had been expanded under Resolution 925 (1994). United Nations, *Resolution 925 (1994)*, (UN Doc. S/RES/925 (1994), 8 June 1994).

⁴⁷ Power, *op cit*, p.380.

neighbouring states at an alarming rate, estimated to be around 2 million.⁴⁸ Finally the Clinton Administration provided the aid needed in the region, albeit in the form of humanitarian relief and not peacekeeping.

Had the veto not been in existence for cases such as genocide, then the US and to a lesser extent, the British, could not have withheld the UN from intervening sooner in the Rwandan genocide. It has been argued that if Dallaire had been given the number of troops requested, tens, even hundreds of thousands could have been saved.⁴⁹ Throughout it all Rwanda had sat on the UNSC as a non-permanent member, their position remained unchallenged. The 1999 Independent Inquiry for the UN states that '[t]he international community did not prevent the genocide, nor did it stop the killing once the genocide had begun'.⁵⁰ It attributes the failure of the UN in preventing the genocide to:

'...a lack of resources and political commitment ... [and] ... a persistent lack of political will by Member States to act, or to act with enough assertiveness ... affect[ing] ... the response by the Secretariat and decision-making by the Security Council, but was also evident in the recurrent difficulties to get the necessary troops for [UNAMIR]. Finally, although UNAMIR suffered from a chronic lack of resources and political priority, it must also be said that

⁴⁸ Madeline H. Morris, 'Justice in the Wake of Genocide: Rwanda', in Belinda Cooper, (ed.), *War Crimes: The Legacy of Nuremberg* (New York: TV Books, 1999), p.212.

⁴⁹ Peter Ronayne, *Never Again?: the United States and the Prevention and Punishment of Genocide Since the Holocaust* (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publishers, 2001), p.177.

⁵⁰ United Nations. *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, op cit, p. 3.

serious mistakes were made with those resources which were at the disposal of the United Nations.’⁵¹

The UN’s failure was demonstrated through the lack of military and political intervention. Aside from the obvious military weaknesses, top level political discussions with Rwandan leaders were not entered into, and media propaganda continued unabated despite considerable condemnation by the UNSC and its members.

In September 1994, the new government of Rwanda requested the UN to establish an international tribunal to prosecute criminals for the crime of genocide, war crimes, and crimes against humanity. The UNSC was finally able to agree that the Rwandan conflict had indeed been genocide, meeting the criteria of the Genocide Convention. Following a report by a Commission of Experts on the genocide, on 8 November 1994, the International Criminal Tribunal for Rwanda (ICTR) was mandated by the UNSC to bring justice to the afflicted country.⁵² The Rwandan representative voted against UNSC Resolution 955 (1994), and China abstained from voting.⁵³

Although Rwanda still wanted an international tribunal, they disagreed with seven points. Firstly they wanted the tribunal to cover crimes from before 1994 seeing that plans, actions and acknowledgements of genocide had occurred prior to 1994.⁵⁴

Secondly the composition and structure was inadequate particularly in that it was to

⁵¹ Ibid.

⁵² United Nations, *Resolution 955 (1994)*, (UN Doc. S/RES/955 (1996), 8 November 1994).

⁵³ United Nations. *Security Council, 49th Year: 3453rd Meeting, Tuesday 8 November 1994, New York*, (UN Doc. S/PV.3453, 8 November 1994). China abstained due to the dissatisfaction of Rwanda. In order for ICTR to be successful it needed the full support of Rwanda. p.11.

⁵⁴ Ibid, p.14.

share the Appeals Chamber and Prosecutor with the Yugoslav War Crimes Tribunal (ICTY).⁵⁵ Thirdly genocide was not given priority amongst the international crimes which the ICTR was to prosecute, therefore punishing those who committed crimes of genocide could be neglected.⁵⁶ Fourth, there were other countries present who had been involved in Rwanda's civil war; Rwanda did not want them to be allowed to propose their own candidates for judges.⁵⁷ Fifth, those persons who were found guilty of crimes under the ICTR could be imprisoned outside Rwanda. This meant that Rwanda lost the power to decide in what to do with the detainees. Further there could be the risk of some countries allowing impunity by letting prisoners go free.⁵⁸ Six, the Statute didn't allow for capital punishment. Capital Punishment is allowed under Rwanda's Penal code, which meant that those most responsible for crimes of international humanitarian law could under the ICTR only receive a maximum of life imprisonment whereas those less responsible would be seen to by the domestic courts and thus could receive the death penalty, creating a disparity between the two.⁵⁹ Finally, for the sake of national reconciliation and justice, Rwanda wanted ICTR to be seated in Rwanda and felt that the Statute was too hesitant on the matter.⁶⁰

Under article II, ICTR was given power to prosecute crime of genocide according to the crimes and acts of genocide established in the Genocide Convention.⁶¹ The

⁵⁵ Ibid, p.15.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid, pp.15-16.

⁵⁹ Ibid, p.16. Capital punishment was omitted from the Statute partly due to the movement to eliminate the death penalty internationally, and to ensure acceptance by the different members of the UNSC. See comments from New Zealand (Mr. Keating), p.5, and the US (Mrs. Albright), p.17.

⁶⁰ Ibid.

⁶¹ United Nations, *Resolution 955 (1994)*, *op cit*, Annex: pp.3-4, Article 2, paras.1-3.

ICTR also dealt with gross violations of Crimes Against Humanity, and Violations of Article 3 common to the Geneva Conventions and of the Additional Protocol II.⁶² All individuals, whether Government leaders or subordinates, the committer of the crime, or as a superior knowing of such crimes and having failed to prevent and punish the perpetrators, could be prosecuted under the ICTR.⁶³ The tribunal's jurisdiction was to prosecute the above mentioned crimes within the time period of 1 January to 31 December 1994, and to all persons committing the crimes within the territory of Rwanda, or Rwandan citizens committing these same crimes in the neighbouring States.⁶⁴ As previously mentioned, the ICTR was to share the Prosecutor and Appeals Chamber with ICTY.⁶⁵ And lastly, the ultimate penalty was limited to imprisonment.⁶⁶

Like the Cambodian tribunal, the ICTR took time to set up. The first accused was brought to Arusha, where the ICTR was established, in May 1996. The first trial began in January 1997. Accused persons consisted of government and local leaders, *interhamwe* leaders, military personnel, journalists⁶⁷, church leaders, doctors, businessmen, even a singer. Two of the most important cases were: Jean Kambanda, former Prime Minister of Rwanda; and Jean-Paul Akeyesu. Kambanda was the first head of state to be convicted of genocide; he was also the first to give a guilty plea

⁶² Ibid, Annex: pp.4-5, Articles 3-4.

⁶³ Ibid, Annex: pp.5-6, Article 6, paras. 1-4.

⁶⁴ Ibid, Annex: p.6, Article 7.

⁶⁵ Ibid, Annex: p.9, Article 12 para.2; Article 15, para.3.

⁶⁶ Ibid, Annex: p.13, Article 23.

⁶⁷ Including journalists and other media personnel distinguished between freedom of expression and the promotion of ethnic hatred. See International Criminal Tribunal for Rwanda, 'The Tribunal at a Glance', <http://69.94.11.53/default.htm> (6 March 2007), para. 8.

for the crime.⁶⁸ The case for Akayesu who was convicted of committing and publicly inciting genocide,⁶⁹ helped to give greater definition for the Genocide Convention.⁷⁰ In general the ICTR helped to establish that: ‘rape and sexual violence may constitute genocide in the same way as any other act of serious bodily or mental harm as long as such acts were committed with the intent to destroy a particular group targeted as such’.⁷¹

Prosecuting the large number of accused persons has been costly and timely, thus the UNSC requested all investigations by 2004, all trials by 2008, and all appeals by 2010. The ICTR has had to establish procedures to speed up the trials, and to focus solely on the most responsible leaders. By 2008, the ICTR should have completed trials for 65-70 persons.⁷² Despite the logistical difficulties which the ICTR has faced, internationally punishing the crime of genocide has been fairly successful.

The Rwandan genocide was the clearest case of genocide since the holocaust. It fit the definition of the Genocide Convention perfectly. Yet international intervention to prevent or halt the genocide was not forthcoming due to the lack of political will by individual member states that possessed the power to determine Rwanda’s fate.

The thousands of lives who were killed, were sacrificed because in the eyes of some

⁶⁸ International Criminal Tribunal for Rwanda, ‘Achievements of the ICTR’, <http://69.94.11.53/default.htm> (16 May 2007).

⁶⁹ International Criminal Tribunal for Rwanda, ‘The Prosecutor of the Tribunal Against Jean-Paul Akayesu (Case No. ICTR. 96-4-T, 2 October 1998)’, 1998, <http://69.94.11.53/default.htm> (16 May 2007).

⁷⁰ International Criminal Tribunal for Rwanda, ‘Achievements of the ICTR’, *loc cit*.

⁷¹ *Ibid*.

⁷² United Nations. *Letter Dated 29 May 2006 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 Addressed to the President of the Security Council*. (S/2006/358, 1 June 2006), p.2.

states, the US in particular, the UN was overstretched in peacekeeping and the failures it was experiencing in those missions severely reduced their will to be involved in yet another operation. Had genocide been classed as an international crime above the rights of the permanent members' individual decisions, tens of thousands of lives could have been saved. It is a case whereby the Genocide Convention was overruled by the political will of individual member states. The international community must be held responsible for the lack of action in the Rwandan genocide, but most of all, the incalculable power of veto given to the individual permanent member states of the UNSC.

Chapter Ten: **Former Yugoslavia (Bosnia and Kosovo)**

Since WWII, Europe, despite the ever hanging threat from the Cold War, had escaped the present perils of war. But in the communists' demise throughout Europe, the tensions that followed were never greater than that in the Balkans. During the 1990s there were two genocides within the war zone of former Yugoslavia: Bosnia followed by Kosovo. The links between the two were the Serbs, and more particularly their leader, Slobodan Milosevic, although Croatia also played its part in the genocide of Bosnian Muslims. The conflict went for a period of almost a decade; far too long for the acts of genocide that were committed. The veto and further threats of using the veto were used. On the other hand, the UN was able to set up a tribunal similar to that of the ICTR. From beginning to end the international community had a huge role to play in the genocide of former Yugoslavia. In contrast to Rwanda, former Yugoslavia maintained stronger international political will and attention needed for action against the genocide, despite its length. But the necessity of NATO to intervene in Kosovo without a UNSC mandate reveals again the need to exclude the power of veto for certain crimes such as genocide.

The most recent conflict in the Balkans can be seen as an outburst of historical tensions. The area, ethnically diverse, has also been contested for centuries between Roman Catholic powers, the Muslim Ottoman Empire, and the Orthodox Church. Prior to WWI it was termed the 'powder keg' of Europe. And it lived up to its name, providing the location for the start of WWI. After the war, Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Montenegro, and Macedonia were united as one state,

Yugoslavia.¹ Later in WWII, a key historical event occurred when a Croatian group called the Ustase sought to eliminate Serbs in Croatia and Serbia; Serbian Chetniks were guilty of the targeting Croats in the same way.² Still, after the war, the states of Yugoslavia were again united under the communist leadership of Josip Broz Tito. Tito's strong rule was devoted to the unity of the diverse federal state. However, there were always differences, most noticeably between the stronger states within Slovenia, Croatia, and Serbia, as each state vied for power and dominance.

BOSNIA AND HERZEGOVINA

Yugoslavia started to unravel with the passing of Tito in 1980. By 1991, both Slovenia and then Croatia declared their independence from the federation. Slovenia's territorial position in the north was far enough removed from the rest of Yugoslavia that its transition to independence was fairly peaceful, with only 10 days of conflict and less than 50 deaths.³ In Croatia, on the other hand, there were clashes between Croats and ethnic Serbs who represented 12 percent of the population.⁴ The Serbs feared their new status and position in a Croatian republic, and there were also feelings of resentment that Slovenia and Croatia had chosen to breakaway from the federation. Serbian leader Milosevic, who had climbed into power in the late 1980s,

¹ Since its formation as one state, it has been known under different titles, however, for consistency and brevity, I have chosen to refer to it solely as Yugoslavia.

² Jacques Semelin, 'Analysis of a Mass Crime: Ethnic Cleansing in the Former Yugoslavia', in Robert Gellately and Ben Kiernan (eds.), *The Specter of Genocide: Mass Murder in Historical Perspective* (Cambridge: Cambridge University Press, 2003), p.358.

³ Martin Mennecke and Eric Markusen, 'Genocide in Bosnia and Herzegovina', in Samuel Totten, William S. Parsons, and Israel W. Charny, *Century of Genocide*. 2nd edn, (New York, London: Routledge, 2004), p.416.

⁴ Ibid.

strongly advocated nationalism, particularly the idea of the Greater Serbia.⁵ The Yugoslav National Army (JNA) and government, dominated by Serbs, supported and armed the Serbs in Croatia.⁶ On 25 September 1991, the UN responded by imposing an arms embargo on all states of former Yugoslavia.⁷

The conflict in Croatia killed approximately 10,000 people⁸ and displaced 700,000⁹; it lasted seven months. Tactics used in the conflict included destruction of towns and cities, civilian massacres, and the then newly-phrased 'ethnic cleansing'. Despite the Serbs obvious intent to hold onto areas with Serbian populations, Bosnia-Herzegovina declared independence in 1992, supported by Croatia, Slovenia, and the international community.¹⁰ It was hoped that by Bosnians independence being acknowledged internationally, it would deter the Serbs from further fighting the state and those that backed it. But the timing couldn't have been worse with the Serbs prepared to take the fighting all the way. Bosnia was ethnically divided into three main groups: Croats (17%), Serbs (31%), and Bosnian Muslims (44%).¹¹ Residents, who had once classified themselves as Yugoslavs, were compelled to re-identify themselves into one of the three groups.¹² The Muslims were especially

⁵ Jackson Nyamuya Maogoto, *War Crimes and Realpolitik: International Justice from World War I to the 21st Century* (Boulder, London: Lynne Rienner Publishers, 2004), p.146.

⁶ Ibid and Mennecke and Markusen, *loc cit*.

⁷ United Nations, *Security Council Resolution 713 (1991)*, (UN Doc. S/RES/ 713 (1991), 25 September 1991), p.43, para.6.

⁸ Mennecke and Markusen, *loc cit*.

⁹ Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Basic Books, 2002), p.247.

¹⁰ Independence to Bosnia was given after an independent referendum in which 99.4 of voters chose independence. Nevertheless, the majority of Bosnian Serbs had boycotted the referendum. Power, p. 248.

¹¹ Joseph S. Nye, *Understanding International Conflict: An Introduction to Theory and History*, 4th edn, (New York, San Francisco, Boston, London, Toronto, Sydney, Tokyo, Singapore, Madrid, Mexico City, Munich, Paris, Cape Town, Hong Kong, Montreal: Longman, 2003), p.152.

¹² Ibid, p.151.

vulnerable with no protective states nearby. The heightened intensity of another republic, even Serbia's neighbour, transformed the war into genocide.

The two Serbs of the Bosnian presidency followed the independence by declaring part of Bosnia as a separate Bosnian Serb state. Again the JNA alongside Bosnian Serb forces transformed themselves into the Bosnian Serb Army with around 80,000 troops and enough arsenal and army vehicles to match.¹³ The arms embargo was still in place leaving non-Serbs practically defenceless.¹⁴ Within days of Bosnia's independence, the Bosnian Serb Army executed non-Serbs from pre-determined lists and destroyed non-Serb cultural and religious sites. The primary aim of the Serbs was to "ethnically cleanse" the Serb areas of all non-Serbs.

Contrary to public perception, Serbians were not the sole perpetrators of the ethnic cleansing and genocide campaign that existed in Bosnia, although they perpetrated the majority of the crimes.¹⁵ The conflict occurred between all three Bosnian groups, plus '...regular army and paramilitary troops from Croatia and Serbia, mercenaries, [UN] troops, and NATO soldiers'.¹⁶ However, the Bosnian Muslims were the ethnic cleansing target of both Croats and Serbs. Methods of the genocide¹⁷ included massacres and executions on civilians, political leaders, intellectuals, and other professionals. There were cases of different sides

¹³ Power, *op cit*, p.249.

¹⁴ Limiting the arms embargo to just the Federal Republic of Yugoslavia (Serbia and Montenegro) and to Bosnian-Serb controlled areas in Bosnia was discussed within the Security Council on several occasions. The Croatian and Bosnian representatives felt that such a move was justified as a measure of self-defence. But the issue was far too controversial to be seriously considered.

¹⁵ Mennecke and Markusen, *op cit*, p.417.

¹⁶ *Ibid*, p.416.

¹⁷ See International Criminal Tribunal for the former Yugoslavia, "'Kosovo, Croatia & Bosnia" (IT-02-54)', 2007, <http://www.un.org/icty/cases-e/cis/smilosevic/cis-slobodanmilosevic.pdf> (23 April 2007), Slobodan Milosevic, pp.1-2.

withholding humanitarian supplies from whole villages and towns. Inhumane detention camps were maintained by Bosnian Serbs. There occurred mass-forced population transfers. Systematic rape was used to impregnate women, mostly Muslim, as a tool of over-bearance over one's ethnic group.¹⁸ Schabas asserts that sexual violence, if used to afflict serious bodily and mental harm, and/or to prevent the births within a group, fall within the context of the Genocide Convention constituting it as an act of genocide.¹⁹ Men were forced to castrate each other, and family members were forced to rape their own family members.²⁰ As each group seized disputed territory villages, towns, and cities were obliterated, removing by force any remaining local residents. UN troops were also held hostage.²¹ The torture, inhumanity, degradation, and killings were deceptively slow, unlike the gas chambers of the holocaust, but the intent was the same.

The UNSC progressively became more involved in the conflict, although not speedily enough to curb the conflict. In February 1992 the UNSC established the United Nations Protection Force (UNPROFOR).²² Their initial mandate was '...to create conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis'.²³ As the conflict continued their mandate was expanded and the force size was increased. By the end of May 1992, the UNSC

¹⁸ United Nations, *Letter Dated 93/02/09 from the Secretary-General Addressed to the President of the Security Council*, (UN Doc. S/25274 (1993), 10 February 1993), Annex I. Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992).

¹⁹ William A. Schabas, *Genocide in International Law* (Cambridge, New York, Melbourne, Madrid: Cambridge University Press, 2000), pp.164-5, 172-3.

²⁰ Peter Maas, 'The Prison Camps', in Henny H. Kim (ed). *War Crimes*. (San Diego, California: Greenhaven Press, 2000), pp.101-111.

²¹ Nye, *op cit*, p.152.

²² United Nations, *Resolution 743 (1993)*, (UN Doc. S/RES/743 (1992), 21 February 1992), p.9, para.2.

²³ *Ibid*, para.5. UNPROFOR was given the right to use force while acting in self-defense under resolution 836. See United Nations, *Resolution 836 (1993)*, (UN Doc. S/RES/836), 4 June 1993), p.3, para.9.

imposed further restrictions on the former Yugoslavia, including economic sanctions; trade embargoes; sport, science, technical, and cultural participation and exchanges; and transport restrictions.²⁴

After months of debate, in 1993 the UNSC assigned the capital Sarajevo and other Muslim areas including Srebrenica, Tuzla, Zepa, Gorazde, and Bihac, within Serb-controlled territory, as safe areas to be protected by the UNPROFOR for thousands of refugees.²⁵ Shawcross highlights the fatal flaws of the safe areas: ‘Resolution 824 made no mention of disarming the populations of the safe areas’ and as Kofi Annan²⁶ stated that UNPROFOR had “‘resource limitations” and only intended it to deploy some twenty to thirty soldiers to each town “as a symbol of the United Nation’s commitment to the well-being of its inhabitants. The idea would not be to protect the town but to raise the political price for any aggression”’.²⁷ Not only that, but the Serbs controlled the access of necessary supplies getting through into the safe areas.²⁸

Despite great media and public attention, Bosnia was not adequately dealt with by the international community. Preceding the UN’s involvement was the European Community’s (EC) inability to resolve the conflict. It took a year for the UN to get involved.²⁹ Then the EC and UN were split between mediation and peacekeeping

²⁴ United Nations, *Resolution 757 (1992)*, (UN Doc. S/RES/757 (1992), 30 May 1992).

²⁵ United Nations, *Resolution 819 (1993)*, (UN Doc. S/RES/819 (1993), 16 April 1993), p.2, para.1, and United Nations, *Resolution 824 (1993)*, (UN Doc. S/RES/824 (1993), 6 May 1993), p.2, para.3.

²⁶ Kofi Annan was at this stage head of the UN’s peacekeeping department.

²⁷ William Shawcross, *Deliver Us from Evil: Warlords and Peacekeepers in a World of Endless Conflict* (London: Bloomsbury, 2000), p.81.

²⁸ Mennecke and Markusen, *op cit*, p.419.

²⁹ In UNSC meetings in February 1994, as the US and Russia were stepping up their participation in the conflict, Sir David Hannay, the UK representative in the UNSC, remarked on the stronger role the

respectively. The UNSC produced countless resolutions including those previously mentioned, and in addition the prohibition of crude oil, petroleum, coal, iron, steel, rubber, tyres, and land and air vehicles, including their motors; the involvement of North Atlantic Treaty Organisation (NATO); the establishment of the Rapid Reaction Force (RRF); and the Yugoslav War Crimes Tribunal (ICTY), among others.³⁰ Furthermore, the international community sought regular negotiations with the different factions. In January 1993, the Vance-Owen Peace Plan, which essentially divided Bosnia on ethnic lines, and sought for immediate cessation of hostilities, was rejected by the Bosnian Serb parliament. But despite the constant efforts of the international community, the ground troops were never much more than a peacekeeping force. Air strikes from NATO which had been authorised by the UNSC were the only credible force to stop the conflict.³¹ But its air strikes did not credit an immediate end to hostilities.

Within the UNSC permanent member states, the US, China and Russia were the weak links. However, once the US overcame its reluctance to get involved, it became zealously involved through NATO. On the other hand though, China was concerned that the UNSC was increasingly overstepping its duties. It was also wary

UN was finally playing. He also welcomed the involvement of the US and Russia. Mr. Sacirbey from Bosnia and Herzegovina, also commented on the lateness of the wider international community involvement. He said that the 'lack of response forced Bosnia and Herzegovina to resign to the to their abandonment by the Western Powers' and continued that 'late is better than never and a little is preferable to nothing when human lives are directly at stake.' See United Nations, *Security Council, 49th Year: 3336th Meeting, Monday 14 February 1994, New York*, (UN Doc. S/PV.3336, 14 February 1994), pp.8-10, 26.

³⁰ United Nations, *Resolution 787 (1992)*, (UN Doc. S/RES/787 (1992), 16 November 1992), p.3, para.9. United Nations, *Resolution 836 (1993)*, (UN Doc. S/RES/836 (1993), 4 June 1993), p.3, para.10. United Nations, *Resolution 998(1995)*, (UN Doc. S/RES/998 (1995), 16 June 1995), p.3, para.9, and United Nations, *Resolution 827 (1993)*, (UN Doc. S/RES/827 (1993), 25 May 1993), p.2, para.2.

³¹ The limited force that UNPROFOR were allowed to exert, NATO's air strikes, and the RRF, were controversial within the UNSC.

of the use of force and the UNSC invoking Chapter VII of the United Charters.³²

Russia and then Secretary-General Boutros Boutros-Ghali had agreed that the conflict was an internal matter, demonstrating the high chance of the Soviet to veto any intervention.³³ Although, like the US, Russia too became involved in the conflict as it became to play a strong part in the negotiations. But both Russia and China continue to abstain from numerous resolutions, and Russia vetoed draft resolution S/1994/1358, which criticized the blocking of humanitarian assistance, and reinforced previous sanctions.³⁴ Russia argued that because of the increasing cooperation by the Federal Republic of Yugoslavia (FRY), such a resolution could be devastating to the peace process, thus they vetoed.³⁵

Towards the end of the conflict, as NATO increased its air striking campaign, Russia called an emergency UNSC meeting on 8 September 1995.³⁶ Russia felt that NATO and the RRF were undermining negotiating efforts, exceeded their mandate, and were no longer neutral. It was also concerned over procedures that allowed the bombing to continue.³⁷ Russia and China would remain the hardest member States to convince of the need for strong action to end the genocides in the Balkans.

The fall of Srebrenica in July 1995 was one of the most notable massacres in the course of genocide. The UN effort was failing and individual states were reluctant to

³² See for example, United Nations, *Security Council 49th Year: 3367th Meeting, Thursday 21 April 1994, New York*, (UN Doc. S/PV.3367, 21 April 1994), p.55.

³³ Maogoto, *op cit*, p.147.

³⁴ United Nations, *Security Council 49th Year:3475th Meeting, Friday 2 December 1994, New York*. (S/PV.3475, 2 December 1994).

³⁵ Ibid, p.9.

³⁶ United Nations, *Security Council, 50th Year: 3575th Meeting, Friday 8 September 1995, New York*, (UN Doc. S/PV.3575, 8 September 1995),p.2.

³⁷ Ibid, pp.2-3.

provide additional troops and arms, leaving the Serbs with the upper-hand. From July 13 to 19, around seven thousand Muslim boys and men inside Srebrenica were taken by bus to execution sites where they were shot dead by Bosnian Serbs.³⁸ To add insult to injury, Srebrenica was then protected by a contingent of Dutch UN troops who were politically and physically unable to stop the Serbs. A further failure of the UN occurred two months after the fall of Srebrenica, and constituted the largest act of genocide in the conflict. Croatian forces retook Serb-controlled areas; with Croatia ‘... [l]ooting and burning tens of thousands of Serbian homes and killing civilians, the Croatian units forced more than 150,000 Croatian Serbs to flee their ancestral homelands ...’.³⁹

In November 1995, the war finally came to an end with the signing of the Dayton Peace Accords by Bosnia, Serbia, and Croatia, in which they all agreed to ‘fully respect the sovereign equality of one another, shall settle disputes by peaceful means, and shall refrain from any action, by threat or use of force or otherwise, against the territorial integrity or political independence of Bosnia and Herzegovina or any other State’.⁴⁰ The end had physically been achieved by the intervention of NATO, who since 1994 had staged air attacks. These attacks, however, lasted consistently for three weeks from 30 August 1995, directly onto the Serb military.⁴¹ Sixty thousand NATO peacekeepers, under the Implementation Force (IFOR) were to keep the peace according to the Dayton Peace Accords. Throughout the course of the conflict and subsequent genocide which lasted for more than three years, around 250,000

³⁸ Mennecke and Markusen, *loc cit.*

³⁹ Ibid, p.416.

⁴⁰ The Avalon Project, ‘Dayton Peace Accords: General Framework Agreement for Peace in Bosnia and Herzegovina’, (1998), <http://www.yale.edu/lawweb/avalon/intdip/bosnia/day01.htm> (8 March 2007), Article 1.

⁴¹ Power, *op cit*, p.440.

people died.⁴² Maogoto argues that the UN's '...principle of non-intervention-delayed and weakened the initial response'.⁴³ Certainly, the Bosnian genocide and war had outlived the Rwandan genocide.

The UNSC, since 1993, established the ICTY under Chapter VII of the UN Charter, as suggested by the commission of experts, which was to end the crimes and bring justice to those responsible.⁴⁴ An international tribunal was deemed to be the most desirable justice system due to the then current nature of former Yugoslavia.

Maogoto also argues that by establishing the ICTY, 'the Security Council hoped to deflect criticism for its reluctance to take more decisive action to stop the bloodshed in former Yugoslavia'.⁴⁵ The mandate given was for all breaches of humanitarian law since 1991. Genocide was included under article IV of its statute.⁴⁶ The ICTY was established in The Hague.

However, the tribunal faced many challenges in its early stages. It was the first of its kind since Nuremburg, and with the conflict still in action, took time to set up.

Harder still was gaining recognition and cooperation from the states of former Yugoslavia and the international community. Gaining sufficient funds and staff was a struggle. The ICTY prosecutor took office on 15 August 1994. The first indictment occurred on 4 November 1994, with the winning custody of accused

⁴² Semelin, *op cit*, p.361.

⁴³ Maogoto, *loc cit*.

⁴⁴ Establishing the tribunal was an achievement within the UNSC as not all members, including permanent members, were in initial agreement with the idea of having a international tribunal. Also, it crossed over the limits of state sovereignty. When the Commission of Experts was prematurely terminated on 30 April 1993, it has been argued that members of the UNSC regretted the Commissions' findings.

⁴⁵ Maogoto, *op cit*, p.144.

⁴⁶ United Nations. *Security Council Resolution 827 (1993)*. (S/RES/827 (1993), 25 May 1993).

persons following in an extremely slow manner.⁴⁷ NATO was given the mandate to apprehend war criminals, but there was reluctance by many troops to do so. Hence there were few prosecutions at the beginning.⁴⁸ The first arrest came in June 1997 by UN peacekeepers in Croatia.⁴⁹ This act helped to boost arrests.

As the ICTY continued to struggle, the message to the Serbs was that the UN and international community were too soft to effectively stop their nationalistic plans. Serbian leader Milosevic continued to enjoy his position, as the international community remained aloof about prosecuting top leaders. It was feared that prosecuting top leaders could dissolve the peace process. Milosevic, within his own state, however, was losing the popularity that he had earlier enjoyed. Aside from other corrupt tactics which he employed to stay in power, pushing for ethnic cleansing in the province Kosovo was his most extreme.

KOSOVO

Serbs considered Kosovo as historically significant to their ideology. Despite the 1.7 million Albanians who constituted 90 percent of the population, the republic of Serbia maintained it as its own province.⁵⁰ The Kosovo-Serbian population had been in decline since the 1960s, with 200,000 – 300,000 emigrating, some by force, by the mid-1980s.⁵¹ When Milosevic came to power he sought to rectify the

⁴⁷ Maogoto, *op cit*, p.159. The example given is that by mid-1997 there were more than 70 persons indicted, but only eight in custody.

⁴⁸ Ibid, pp.156-7.

⁴⁹ Ibid, p.158.

⁵⁰ Power, *op cit*, p.445. Serbia had limited sovereignty over Kosovo.

⁵¹ Aleksa Djilas, 'A Profile of Slobodan Milosevic', *Foreign Affairs*, Summer, 1993, Vol 72. No.3, p.82

situation and politically marginalise the Albanians. Remaining Kosovo Serbs welcomed changes that would alleviate their political, economic, and social struggles. In 1989, Milosevic reversed the autonomy of Kosovo leading to the subordination of Albanians.⁵² To the Albanians despair, when the international community was focused on resolving the conflict in former Yugoslavia, the troubles in Kosovo were not addressed. Kosovo had even been observed as a trouble spot prior to the conflicts that ravaged in other parts of former Yugoslavia. The result was the formation of the Kosovo Liberation Army (KLA) which sought independence.

In March 1998, the KLA attacked several Serbian policemen, the consequence of which brought a violent backlash by the Serbs. The conflict between the two parties continued back and forth. The Serbians tactics were not confined to attacking the KLA solely, but included killing KLA relatives and destroying whole villages.⁵³ Almost immediately the UNSC established an arms embargo within FRY and Kosovo, and allowed the ICTY to begin gathering information for related crimes in Kosovo.⁵⁴ However, approximately 3,000 were killed and a further 300,000 were expelled by the end of 1998.⁵⁵ The world's attention was again back on former Yugoslavia.

Despite the UNSC involvement from the very beginning of the conflict, there were divided opinions within the Council that would continue to the conflicts end. Within the permanent members, France, Britain, and the US favoured a strong, rapid

⁵² Ibid.

⁵³ Power, *loc cit.*

⁵⁴ United Nations, *Resolution 1160 (1998)*, (UN Doc. S/RES/1160 (1998), 31 March 1998), p.2, para.8; p.4, para.17.

⁵⁵ Power, *loc cit.*

response to the situation to avoid the ‘ethnic cleansing’ and the subsequent mistakes made by the UNSC in Bosnia.⁵⁶ While China and Russia were from the outset, determined that the situation was an internal matter and did not constitute a regional or international threat.⁵⁷ Moreover they wanted the UNSC to deal with the conflict only once the FRY had requested such involvement.⁵⁸ Resolution 1160 (1998) that established the arms embargo and the ICTY involvement was reluctantly agreed to by Russia whereas China abstained.⁵⁹

Richard Holbrooke, one of the significant negotiators from the previous conflicts in former Yugoslavia, was once more required to broker a deal with Milosevic. Milosevic accepted to pull back some of his forces and allow 2,000 unarmed international verifiers.⁶⁰ If they complied with this, then NATO would hold back from air strikes.⁶¹ The air strikes from NATO were more than just an unsubstantiated threat as members of NATO were forthright in claiming that preparations were underway for military operations if necessary.⁶² Russia and China, vehemently opposed any use of force determining that NATO was acting irresponsible. Both states even abstained from Resolution 1203 (1998) which

⁵⁶ See United Nations, *Security Council, 53rd Year: 3868th Meeting, Tuesday 31 March 1998, New York*, (UN Doc. S/PV.3868, 31 March 1998), pp.4,12-14.

⁵⁷ *Ibid*, p.10.

⁵⁸ *Ibid*.

⁵⁹ *Ibid*.

⁶⁰ See United Nations, *Resolution 1203 (1998)*, (UN Doc. S/RES/1203 (1998), 24 October 1998), pp.2-3. The Organisation for Security and Cooperation in Europe (OSCE) established a Verification Mission in Kosovo, (p.2, para.1); NATO established an Air Verification Mission (p.3, para.3). Power, *op cit*, p.446. One month earlier the UNSC established resolution 1199 that established an European Council Monitoring Mission and diplomatic missions. Again China abstained due to, as it said, the lack of concern for the legitimate right for the FRY. Once more it called the conflict an internal matter with no threat to international peace and security. See United Nations, *Resolution 1199 (1998)*, (UN Doc. S/RES/1199 (1998), 23 September 1998), p.3, para.4 (b). And United Nations, *Security Council, 53rd year:3930th Meeting, Wednesday 23 September 1998, New York*, (UN Doc. S/PV.3930, 23 September 1998), pp.3-4.

⁶¹ Power, *loc cit*.

⁶² United Nations, *Security Council, 53rd year:3930th Meeting, Wednesday 23 September 1998, New York*, *op cit*, p.4.

established the verification missions.⁶³ However, had the resolution contained a ‘...*carte blanche* with respect to the use of force...’, it seems they were prepared to veto it.⁶⁴

Early in 1999, some of the major leaders of the international community were prepared to stop another ‘Srebrenica’ and further spreading of instability in the Balkans. After continued failure to stop the Serbians, NATO began aerial bombing on 24 March 1999.⁶⁵ Unlike the air attacks in the previous conflict, these air attacks did not come with the prerequisite UN mandate. Permanent members of the UNSC, the US, Britain, and France, were prepared to engage in the attacks to avoid the time spent in gaining Russia and China’s commitment in a UNSC resolution. From the beginnings of the 1990s conflict, as stated before, Russia had been reluctant to get involved in what it considered an internal matter. China too was opposed to “interfering”, both were especially against the air campaign. But the other three permanent member states were unwilling to face an almost certain veto by Russia and China.

An emergency meeting was held on the day the air strikes began. Both Russia and China gave their outrage to the ‘open aggression’.⁶⁶ Their greatest concern was that it was in violation of the UN Charter, international law, and without the authorisation of the UNSC.⁶⁷ They also agreed it was unjustified, and detrimental to the ‘multi-

⁶³ United Nations, *Security Council, 53rd Year: 3937th Meeting, Saturday 24 October 1998, New York*, (UN Doc. S/PV.3937, 24 October 1998), pp.11-12, 14.

⁶⁴ *Ibid*, pp.12,14.

⁶⁵ United Nations, *Security Council, 54th Year: 3988th Meeting, Wednesday 24 March 1999*, (UN Doc. S/PV.3988, 24 March 1999).

⁶⁶ *Ibid*, p.3.

⁶⁷ *Ibid*, pp.2,12.

polar system of international relations'.⁶⁸ China further called it interference in an internal matter.⁶⁹ And finally, Russia rebutted the statement by the Netherlands representative that UNSC prior approval was not gained due to '...one or two permanent members' rigid interpretation of the concept of domestic jurisdiction,...'.⁷⁰ The Russian representative argued that there had been no discussions inside or outside the UNSC chambers on matters of using force in Kosovo.⁷¹ However, statements in earlier meetings both Russia and China freely made comments on their disapproval of the use of force and acknowledged their reservations in the verification mission, as discussed above.

On the other hand, the US, France, and Britain argued their position in favour of the NATO attacks in response to the lack of compliance by the Serbs, and the deteriorating humanitarian situation. The US representative argued that NATO had taken the 'necessary' move at the 'greatest reluctance'.⁷² The French representative referred to the lessons of Bosnia and stated that the international community could not abandon the people of Kosovo.⁷³ Lastly, the British representative exclaimed that all other means had been frustrated.⁷⁴ He refuted arguments that the attacks were illegal by saying that the action was legal because it was preventing a humanitarian catastrophe.⁷⁵ Since then, however, their illegal "war" on the Serbs has been popularly acknowledged as legitimate in the face of genocide.

⁶⁸ Ibid, pp.2-3.

⁶⁹ Ibid, p.12.

⁷⁰ Ibid, p.8.

⁷¹ Ibid, p.13.

⁷² Ibid, p.4.

⁷³ Ibid, p.9.

⁷⁴ Ibid, p.12.

⁷⁵ Ibid.

On 26 March 1999, Russia, along with India and Belarus, submitted a draft resolution that demanded NATO to stop all force against the FRY.⁷⁶ China and Russia were the only permanent members who supported it. Twelve states abstained including all three remaining permanent members, thus the resolution was not adopted owing to the consensus of the majority.⁷⁷ France, Britain and the US continued to maintain their position that NATO's actions were not illegal and were an exceptional measure. The US representative stated that:

‘The United Nations Charter does not sanction armed assaults upon ethnic groups, or imply that the international community should turn a blind eye to a growing humanitarian disaster. NATO's actions are completely justified’.⁷⁸

The differing views within the Council had even the FRY representative claim in his own hypocrisy that NATO's unlawful aggression was ‘outperforming even the Nazi's’.⁷⁹ Serbia even went as far as to file proceedings against the members of NATO, on 29 April 1999, to the ICJ.⁸⁰ Their aim was to stop the air attacks, and they sought ICJ jurisdiction under Article IX of the Genocide Convention. It took one month for the ICJ to dismiss the cases citing no prima facie jurisdiction.

⁷⁶ United Nations, *Draft Resolution by Russia, India, Belarus*. (UN Doc. S/1999/328, 26 March 1999).

⁷⁷ United Nations, *Security Council, 54th Year: 3989th Meeting, Friday 26 March 1999*, (UN Doc. S/1999/328, 26 March 1999), p.6.

⁷⁸ *Ibid*, p.5.

⁷⁹ *Ibid*, p.11.

⁸⁰ International Court of Justice, ‘Press Release 1999/33: Legality of ‘Use of Force’ (Yugoslavia v. United States of America)’, 2 June 1999, <http://www.icj-cji.org/docket/index.php?pr=371&code=yus&p1+3&p2=3&p3=6&cases=114&k=25> (15 May 2007).

The Serb response to the NATO bombing was to '[expel] virtually the entire Albanian population at gunpoint. In a carefully coordinated campaign, '[the JNA] ... surrounded Kosovo towns and villages and used massive artillery barrages to frighten the local inhabitants into flight...'.⁸¹ Men, women, and children were separated; younger men were routinely killed; identification papers were 'systematically' destroyed; homes and villages were destroyed; and more than 1.3 million was forced by foot or by train, out of their homes, and approximately 740,000 fled Kosovo.⁸²

NATO's air attack lasted for 78 days,⁸³ ending in June 1999, before finally succeeding in forcing Serbia out of Kosovo. Kosovo Albanians were able to return to their homes. Kosovo Serbians who remained became victims to the same crimes they had themselves perpetrated – ethnic cleansing. Several hundred Serbs were killed and more than 100,000 fled.⁸⁴ On 10 June 1999, the UNSC authorised the UN Interim Administration Mission in Kosovo (UNMIK)⁸⁵ which has around 50,000 international troops, 4,000 international police officers, and 16,000 UN administrative staff.⁸⁶ Their task has been to keep the peace, ensure the withdrawal

⁸¹ Power, *op cit*, p.449.

⁸² Ibid, p.450.

⁸³ One fatal casualty of the NATO air strikes was the 'collateral damage' of China's embassy which was destroyed in the campaign. China was outraged at what it considered was an intentional attack. Russia further used the occasion to claim that NATO was attempting to use Kosovo in order to change the world order. See United Nations, *Security Council, 54th Year: 4000th Meeting, Saturday 8 May 1999, New York*, (UN Doc. S/PV.4000, 8 May 1999), pp.2-4,12.

⁸⁴ Martin Mennecke, 'Genocide in Kosovo?', in Samuel Totten, William S. Parsons, and Israel W. Charny, *Century of Genocide*. 2nd edn, (New York, London: Routledge, 2004), p.451.

⁸⁵ United Nations, *Security Council Resolution 1244* (1999). (S/RES/1244 (1999), 10 June 1999).

⁸⁶ Mennecke, *loc cit*.

of Serb forces and the disarming of the KLA, and to work as a transitional administration.⁸⁷ Kosovo's future is still uncertain.

The international community has been divided on the issue of calling the Kosovo conflict genocide. Certainly the intent of the Serbians was to rid Kosovo of all Albanians, but they fell short of trying to destroy them. The ICTY has indicted individuals for crimes against humanity, although so far there have been no persons indicted for the crime of genocide in Kosovo.⁸⁸ Whether or not it was genocide in the strictest sense, does not change the realities of Serbia's intent in the conflicts of former Yugoslavia during the 1990s. Indeed the Serbians committed a campaign of extreme nationalism and was prepared to intentionally exterminate or expel all non-Serbs.

Almost 14 years since the ICTY was first established, it continues to prosecute perpetrators of genocide and other serious crimes within the former Yugoslavia since 1991.⁸⁹ The most significant of cases was that of Slobodan Milosevic who was finally indicted for the crimes of genocide, crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war, on 22 November 2001. The ICTY recognised his role as leader to influence those under him either by act or omission. Altogether he faced 66 charges. Unfortunately on 11

⁸⁷ United Nations, *Security Council Resolution 1244 (1999)*, *op cit*, pp.3-4. China abstained from the resolution stating: 'In essence the "human rights over sovereignty" theory serves to infringe upon the sovereignty of other states and to promote hegemonism under the pretext of human rights. This totally runs counter to the purposes and principles of the United Nations Charter'. See United Nations, *Security Council, 54th Year: 4011th Meeting, Thursday 10 June 1999, New York*, (UN Doc. S/PV.4011, 10 June 1999), p.9.

⁸⁸ Mennecke, *op cit*, p.452.

⁸⁹ Individuals from all three ethnic groups, Serbians, Croats, and Bosnian Muslims, have been indicted by ICTY.

March 2006 after four years of his trial, and with only a few months remaining, Milosevic was found dead in his cell.

So far, as of 5 February 2007, the ICTY has indicted 161 persons, sentenced 48, acquitted 5, and referred 11 to national jurisdiction. Ten were deceased or passed away during proceedings, 25 had their indictments withdrawn, and 61 are currently in various stages of proceedings.⁹⁰ Six other Serbian leaders are currently at large. Most notable among them are Radovan Karadzic and Ratko Mladic, the military leaders who planned the Srebrenica massacre. They are assumed to still be somewhere in the former Yugoslavia, but as “heroes” of Serbia they have been able to effectively remain free. Like ICTR, the UNSC has also requested the ICTY complete all investigations by 2004, all trials by 2008, and all appeals by 2010.

Furthermore, in another attempt to bring justice for the genocide in Bosnia, the government of Bosnia and Herzegovina filed proceedings against the former FRY, at the ICJ on 20 March 1993 and 14 December 1995.⁹¹ It was Bosnia’s claim that the FRY had violated the Genocide Convention ‘...by destroying in part, and attempting to destroy in whole, national, ethnical, or religious groups within the, but not limited to the territory of the Republic of Bosnia and Herzegovina, including in particular the Muslim population ...’.⁹² In addition, they accused FRY⁹³ of conspiring,

⁹⁰ International Criminal Tribunal for the Former Yugoslavia, ‘ICTY at a glance: Key Figures of ICTY Cases’, 5 February 2007. <http://www.un.org/icty/glance-e/index.htm> (21 February 2007).

⁹¹ International Court of Justice, ‘Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro).’, 26 February 2007, <http://www.icj-cij.org/docket/files/91/13685.pdf> (April 2007). p.4, para.1.

⁹² Ibid, p.20, para.1.

⁹³ At the time of filing the proceedings, the accused state was known by the title the Federal Republic of Yugoslavia. In late 2000 it changed its name to Serbia and Montenegro and has since then divided

inciting, aiding, and abetting, and furthermore failing to prevent and punish the acts of genocide.⁹⁴ The FRY, eventually Serbia, repudiated such claims and initially responded by claiming Bosnia and Herzegovina was responsible for the crimes of genocide, although these claims were later withdrawn.⁹⁵ Further they argued that the ICJ had no jurisdiction over the matter as the convention deals holds individuals responsible whereas the ICJ concerned matters between states.⁹⁶

On 26 February 2007, the ICJ gave its verdict on the, 'Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)'.⁹⁷ First the ICJ found that the case was within their legal jurisdiction under Article IX of the Genocide Convention as it was a dispute between states.⁹⁸ In what has been deemed controversial, based on the information it had, the ICJ found that Serbia had not committed, conspired, or been complicit in the acts of genocide.⁹⁹ However it did find that Serbia was guilty of failing to prevent the genocide that occurred in Srebrenica.¹⁰⁰ Further that Serbia had failed to transfer Ratko Mladic to the ICTY.¹⁰¹

into two separate states: the Republic of Serbia, and the Republic of Montenegro. The Republic of Serbia has accepted full rights and obligations to continue as the former state. See Ibid, p.29, para.67.

⁹⁴ Ibid, p.20, paras.2-4.

⁹⁵ Ibid, p.22, para.3.

⁹⁶ Ibid, p.168, para.1.

⁹⁷ Ibid, p.1.

⁹⁸ Ibid, p.168, para.1.

⁹⁹ Ibid, pp.168-169, paras.2-4. There was not enough evidence to find Serbia guilty beyond reasonable doubt that it had committed these crimes.

¹⁰⁰ Ibid, p.169, para.5.

¹⁰¹ Ibid, p.169, para.6.

The genocides that were part of the former Yugoslavia conflict did garner much international support. The international community was active in mediation and negotiations, UN resolutions to stop the conflict, and by NATO air attacks that put fighting to an end both times. But the measures for the most part were weak and only encouraged further conflict. Decisive action was needed at the beginning, like that in Kosovo. But all forceful action needed to be supported by all the members of the UNSC permanent member states. Russia and China proved to be the weak links, delaying action, and Russia further used their veto power. The Bosnian genocide lasted for three years due to these delays; the Kosovo genocide lasted just over a year because NATO was prepared to speedily stop the conflict by air attack without a UNSC mandate. The veto, which could have stopped the Kosovo intervention and prolong the conflict, was bypassed. The lesson learnt from the Balkans is that if the international community is to effectively prevent and punish genocide, then the veto should be permanently excluded for cases of genocide.

Chapter Eleven: **Darfur, Sudan**

The key case of genocide for this thesis is the Darfur, Sudan genocide. All the previous cases of genocide discussed, have shown that without immediate intervention by the international community, genocide can only worsen. Since 2003, genocide has been occurring in Darfur, and with particular permanent member states unwilling to agree to the action necessary to stop it, it will undoubtedly continue. This particular genocide demonstrates clearly that veto power politics from permanent UNSC members is a problem and must be stopped in order to prevent genocide. It is a case that shows that 'never again' is undoubtedly occurring again and again and again. It shows that despite progress made with the Genocide Convention, the international-collective will to punishing perpetrators of genocide from countries such as Cambodia, Rwanda, and former Yugoslavia, is now redundant against the power of the veto.

The Sudan is the largest state in the African continent and has been plagued by conflict since its independence from Egypt and France in 1956. Its civil war lasted 38 years, longer than any other in the world. The Darfur genocide is a new and far more ferocious conflict, displaying many of the same characteristics of the civil war. Up until January 2003, Sudan's conflict was characterised by a strong north-south divide. The country is divided into two main racial groups: Arabs in the north, who constitute 40 percent of the population, and Africans in the south, who make up the

other 60 percent of the population. The population can again be divided into three religious groups: 60 percent are Muslims in the north, of both Arab and African race, and in the south, animist and African Christians comprise 25 and 15 percent respectively.¹

Since its independence, Arab Muslims in the north have controlled the countries economic resources and dominated politics. The fight for equality saw the human rights abuses and humanitarian casualties to millions inflicted by the government itself.² Finally, in July 2002 the Sudan government and south rebel groups agreed to a six year transition period whereby the south became an administration authority without Islamic Sharia law. At the end of the period, the south will decide, by referendum, to stay part of Sudan or become independent. Regrettably, the region of Darfur in the west was not included in the talks.

The conflict between the African Muslims and the Arab Muslims came as a result of the governments ‘...prolonged discrimination against the Sudanese Blacks in Darfur *and* due to the fact that repeated pleas for economic assistance had been ignored. ...[and] was guilty of oppressing the Sudanese Black population’.³ Prior to the outburst, tensions between the two groups, usually through the nomadic Arabs

¹ Oxfam, ‘Sudan People and Society’, 2007.

<http://www.oxfam.org.uk/coolplanet/kidsworld/world/sudan/sudpeop.htm> (31 January 2007).

² From 1983, figures reveal that two million died and four million were displaced due to the civil war. The government has been responsible for ‘aerial bombing of civilian targets, looting of cattle and grain, destruction of villages, extrajudicial executions, and abduction of women and children’. See Unitarian Universalist Service Committee, ‘Background – Sudan’s History of Conflict’ http://www.uusc.org/darfur/article20040716_2.html (31 January 2007).

³ Samuel Totten and Eric Markusen, ‘Research Note: The US Government Darfur Genocide Investigation’. *Journal of Genocide Research*, Vol.50, No.2, 2005, p.280, in *EBSCOhost* <http://web.ebscohost.com.ezproxy.waikato.ac.nz:2048/ehost/pdf?vid=4xhid=119&sid=92143357-bde1-40bd-ae95-8b62ec57a2d8%40sessionmgr107> [accessed 4 December 2006].

encroaching on the sedentary African tribal land for the purpose of grazing their livestock was dealt to with minimum violence. In March 2003, fighting began between Sudan's armed forces and the 'Janjaweed' (devil's on horseback), government backed militia, versus Darfur's initial rebel groups, Sudan Liberation Army (SLA), and Justice and Equality Movement (JEM).⁴ But, the governments target was not solely the rebels. Instead targets have included millions of Darfur civilian residents, particularly the rebels' own ethnic groups – Fur, Masalit, and Zaghawa.⁵ Currently, during the four years of the genocide, around 400,000 people have been killed, and 2.5 million have been forced to flee their homes.⁶ Moreover, 4 million require humanitarian assistance for their complete survival.⁷ The Sudanese armed forces and the Janjaweed, under the Sudan government, has been responsible for carrying out a 'scorched earth policy',⁸ burning and destroying hundreds of villages, committing mass rape and other sexual abuse to thousands of women and girls, and killing thousands more.

In late 2006, Under-Secretary-General for Humanitarian Affairs, Jan Egeland stated that, 'Large new militias are being armed as we speak while none are being unarmed ...'.⁹ The conflict has not only worsened in the Sudan, but has now spread into neighbouring states Chad and Central African Republic (CAR). Chad has been the

⁴ Ibid.

⁵ Ibid.

⁶ Salah Sarrah, 'Sudan, Chad Agree to Bolster Peace Deal – Adviser', *The Washington Post*, 21 February 2007, in <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/21/AR2007022101498.html> [accessed 22 February 2007].

⁷ Ibid.

⁸ Totten and Markusen, *loc cit*.

⁹ Jan Egeland as quoted in United Nations, 'Annan Awaits Sudan Letter on Hybrid UN Force for Darfur; UN Aid Chief Warns of 'Abyss'', *UN News Centre*. 22 November 2006, <http://www.un.org/apps/news/story.asp?NewsID=20706&Cr=Sudan&Cr=1> [accessed 27 November 2006].

destination of over 200,000 Darfur refugees whose lives are again at risk.¹⁰ At the international level, the relations between the three states have worsened. The international community now has the arduous task of stopping the genocide and resolving the inter-state tensions before they escalate. On 15 February 2007, the three states agreed to the rights of sovereignty of each state, to stop supporting any rebellion within their own states, and to stop the use of propaganda against each other. They also agreed to increase their cooperation with each other, the UN, and the African Union (AU).¹¹ Only time will tell if the three states can keep to this agreement.

The first hurdle to prevent and punish the genocide has been to appropriately define the Darfur conflict as genocide. So far, the Darfur conflict has been recognised as genocide not only by international humanitarian organisations, human rights activists, and scholars, but by the European parliament, and by some individual states, most notably the US since 2004.¹² But some states have been reluctant to define it as such, recognising only the crimes against humanity and war crimes that are also occurring in Darfur. A 2005 UN International Commission of Inquiry found clear links between the government forces and the militias, that together they ‘...conducted indiscriminate attacks, including the killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual

¹⁰ United Nations, ‘As Rebels Advance to Chadian Capital, Annan Condemns Attempts to Seize Power by Force’, *UN News Centre*. 25 November 2006, <http://www.un.org/apps/news/story.asp?NewsID=20727&Cr=Chad&CrI=> [accessed 27 November 2006].

¹¹ Sarrah, *loc cit*.

¹² Totten and Markusen, *loc cit*. Both the US congress and the Bush Administration have confirmed the conflict as genocide.

violence, pillaging and forced displacement, throughout Darfur'.¹³ Further they found that, 'These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity'.¹⁴ It concluded that the Government of Sudan (GOS) had not pursued a policy of genocide as the GOS lacked the intent of genocide.¹⁵ This report has been the source that has stopped states from calling the conflict genocide.¹⁶

Contrary to that one report, there have been numerous reports that shed additional light on the subject. For instance, in the 2004 Special Rapporteur on extrajudicial summary or arbitrary killings, Ms Asma Jahangir stated that: 'A large number of people whom I met had a strong perception that the government was pursuing a policy of 'Arabisation' of the Sudan, and in particular the Darfur region, allegedly, those of Arab descent seek to portray themselves as 'pure' Muslims as opposed to Muslims of African ethnicity'.¹⁷

Numerous other reports indicate that the three ethnic groups – Fur, Masalit, and Zaghawa – as mentioned above, have been specifically targeted. With the combination of reports there can be no denial that the conflict constitutes genocide according to the Genocide Convention. UN officials have also repeatedly compared it to the genocides of Rwanda and Bosnia. But terms aside, the reality is the Darfur

¹³ United Nations, *Report of the International Commission of Inquiry* (UN Doc. S/2005/60, 1 February 2005), p.3.

¹⁴ Ibid.

¹⁵ Ibid, p.4.

¹⁶ For example see United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination*. (UN Doc. CERD/C/SR.1714, 18 August 2005), paras. 39, 44.

¹⁷ United Nations Economic and Social Council, *Civil and Political Rights, Including the Question of Disappearances and Summary Executions. Extra judicial, Summary or Arbitrary Executions: Addendum, Mission to the Sudan*. (UN Doc. E/CN.4/2005/7/Add.2, 6 August 2004), p.11, para.24.

conflict has been going on for four years too long and the international community must take accountability for that.

According to Totten and Markusen, because the US dared to call the conflict genocide, it has moved the UN to action.¹⁸ But without the unanimity of the five permanent member states, definitive action most probably will not be taken. Russia and China have avoided using the term genocide. Not only that but they have sought to resolve the conflict by political measures that, according to Russia, have not yet been exhausted.¹⁹ Both countries have been reluctant to even support numerous soft resolutions, such as sanctions.²⁰ They, and other states like Algeria, have even gone so far as to call the determined approach of the West as culturally insensitive to African ways of conflict resolution.²¹ Other states have even said that the reports of the crimes occurring in Darfur are over exaggerated.²² So in regards to the compromises that have to be given within the UNSC, negotiations continue.

Negotiations have led to ceasefires throughout the genocide; so far none have been effective. There have been repeated calls for President Omar Hassan al-Bashir to disarm the militias, allow greater access and security for humanitarian workers, and of course to negotiate a peace settlement. On 8 April 2004, progress was made with the Ceasefire Agreement which led to a 7,000 strong African Union Mission in

¹⁸ Totten and Markusen, *op cit*, p.289.

¹⁹ United Nations, *Security Council 60th Year: 5153rd Meeting, Tuesday, 29 March 2005, New York* (UN Doc. S/PV.5153, 29 March 2005).

²⁰ Example of abstentions from either one or both states include: UNSCR 1556 (2004), UNSCR 1564 (2004), UNSCR 1590 (2005), UNSCR 1591 (2005), UNSCR 1706 (2006).

²¹ United Nations, *Security Council 60th Year: 5153rd Meeting, Tuesday, 29 March 2005, New York, loc cit*.

²² See United Nations, *Human Rights Council 4th Special Session: Summary Record of the 2nd Meeting, Tuesday 12 December 2006, New York* (UN Doc. A/HRC/S-4/SR.2, 22 January 2007), p.5, para.16.

Sudan (AMIS).²³ The mission is the AU's first peacekeeping mission; and in respect of its great effort, it has struggled in its tasks.

Within the UNSC the five permanent members have again been divided in how best to resolve the conflict. On 11 June 2004 the UNSC established the United Nations Advance Mission in the Sudan (UNAMIS).²⁴ This was in response to the Comprehensive Peace Agreement which was then currently in progress for the end of the Sudan's north/south civil war. Later, once the Comprehensive Peace Agreement had been concluded, the UNSC established the United Nations Mission in the Sudan (UNMIS) which consisted of up to 10,000 military personnel and an appropriate civilian component including 715 civilian police personnel.²⁵ However, the UNSC felt that examples of UNAMIS, UNMIS, and the parties of the former conflict would be encouraging to the Darfur conflict.

But encouragement and the AMIS mission was not enough, and on 30 July 2004, the UNSC imposed an arms embargo in the Darfur region, to all non-government entities, individuals, and the Janjaweed.²⁶ China and Russia abstained from voting for the resolution. They felt that the measures were not helpful to the progress made in the diplomatic efforts. China in particular felt that the role of the UNSC was to

²³ African Union Mission in the Sudan, 'Chronology', <http://www.amis-sudan.org/briefing.html> (6 March 2007), and 'Status of Mission Agreement (SOMA) on the Establishment and Management of the Ceasefire Commission in the Darfur Area of Sudan (CFC)', 25 May 2004, <http://www.unmis.org/english/documents/darfur-soma.pdf> (31 January 2007).

²⁴ United Nations, *Resolution 1547 (2004)*, (UN Doc. S/RES/1547 (2004), 11 June 2004).

²⁵ United Nations, *Resolution 1590 (2005)*, (UN Doc. S/RES/1590 (2005), 24 March 2005, p.3, para.1.

²⁶ United Nations, *Resolution 1556 (2004)*, (UN Doc. S/RES/1556 (2004), 30 July 2004), p.5, para.7. In the preamble, the resolution defined the conflict as '...acts of violence especially those with an ethnic dimension...'. p.2.

assist the GOS in its primary responsibility to end the conflict.²⁷ China and Russia were to abstain again with further military and economic sanctions, even prohibiting the entry of individual persons within other States.²⁸ Both countries were again firm that in their view sanctions could easily be detrimental to the situation. The Russian representative argued that diplomatic measures were no way exhausted.²⁹

Resolution 1593 on 31 March 2005 referred the Darfur conflict to the Prosecutor of the ICC.³⁰ This time Russia voted for the resolution and the US abstained; China also abstained. Both China and the US although in favour of seeing justice in either a Sudanese national or hybrid court, were honest enough to share their general reservations for the ICC.³¹

By January 2006, Mr. Jan Pronk, the Special Representative of the Secretary-General for the Sudan, said concerning the Darfur peace talks: ‘all parties have lost all sense of urgency and do not really care about deadlines’.³² He reported that UNSC resolutions had been brushed aside.³³ Moreover he seemed to rebuke the UNSC for their lack of action stating that hope has its limits and that Darfur needed more than

²⁷ United Nations, *Security Council, 59th Year: 5015th Meeting, Friday 30 July 2004, New York*, (UN Doc. S/PV.5015 (2004), 20 July 2004), pp.4,7.

²⁸ United Nations, *Resolution 1591 (2005)*, (UN Doc. S/RES/1591 (2005), 29 March 2005), pp.3-5, paras.2-6.

²⁹ United Nations, *Security Council, 60th Year: 5153rd Meeting, Tuesday 29 March 2005, New York*, (UN Doc. S/PV.5153 (2005), 29 March 2005), pp.5-6.

³⁰ United Nations, *Resolution 1593 (2005)*, (UN Doc. S/PV.1593 (2005), 31 March 2005), p.1, para.1.

³¹ United Nations, *Security Council, 60th Year: 5158th Meeting, Thursday 31 March 2005, New York*, (UN Doc. S/PV.5158 (2005), 31 March 2005).

³² United Nations, *Security Council, 61st Year: 5344th Meeting, Friday 13 January 2006, New York*, (UN Doc. S/PV.5344 (2006), 13 January 2006), p.4.

³³ *Ibid*, p.5.

lip service. He urged the UNSC to change tactics.³⁴ But the UNSC was not to change.

In March 2006 the Peace and Security Council of the AU requested AMIS to transform into a larger and more mobile UN operation with a stronger mandate. On 5 May 2006 the GOS and some of the rebel groups and other parties signed the Abuja Peace Agreement, otherwise known as the Darfur Peace Agreement. The Agreement was pursued strongly by both the US and Britain. After the Agreement, on 16 May 2006, the UNSC authorised AU's request.³⁵ The resolution was unanimously approved, but both China and Russia were adamant that such a UN peacekeeping operation needed the GOS approval.³⁶ Since then the GOS has been promising to accept the UN mission, but so far has not yet done so. At one stage, the GOS sought to implement its own military force in Darfur, in complete violation of the Darfur Peace Agreement.³⁷ Ironically, as mentioned above, the UN has missions in southern Sudan.

On 31 August 2006, under resolution 1706, the UNSC expanded UNMIS mandate for Darfur pending on the GOS consensus.³⁸ The resolution also increased military personnel to 17,300, civilian police personnel to 3,300, and up to 16 formed Police

³⁴ Ibid, pp.4-5.

³⁵ United Nations. *Resolution 1679 (2006)*. (S/RES/1679 (2006), 16 May 2006), p.2, para.3.

³⁶ United Nations, *Security Council, 61st Year: 5439th Meeting, Tuesday 16 May 2006, New York*, (UN Doc. S/PV.5439 (2006), 16 May 2006), pp.2-3. Despite being a 'speedy' resolution, China voted in favour of the resolution in respect of the AU.

³⁷ United Nations, *Security Council, 61st Year: 5528th Meeting, Monday 18 September, New York*, (UN Doc. S/PV.5528 (2006), 18 September 2006), p.6.

³⁸ United Nations, *Resolution 1706 (2006)*, (UN Doc. S/RES/1706 (2006), 31 August 2006), p.3, para.1.

Units.³⁹ Russia and China abstained from voting. They agreed in principle to the resolution but objected to the timing of it and the lack of consent by the GOS.

Again, pursuing the political path to ensure total agreement by the GOS has only led to more atrocities.⁴⁰ All the while, AMIS continues to struggle along in its overwhelming task as deadlines continue to be extended to appease the GOS.⁴¹

Not long after the Darfur Peace Agreement, in the months of July through to September 2006, attacks on humanitarian workers heightened as 21 humanitarian vehicles were hijacked, 31 convoys were ambushed and looted, 6 humanitarian workers were killed, and a further 2 AU military observers were also killed.⁴² The violence has been so extreme as to drive some humanitarian groups out of Darfur. Moreover, attacking humanitarian workers is a war crime.

In terms of justice, under UNSCR 1593 (2005), the newly established ICC was given authority over the conflict.⁴³ It has been its task of undergoing an independent inquiry into persons most responsible for the international crimes in Darfur. It has found it a challenge to identify specific individuals. It is also to investigate the Sudan's national proceedings for persons accused of the same crimes, to ensure that they are genuine and that there is justice given to the victims. Its investigations have

³⁹ Ibid., p.3, para.3.

⁴⁰ United Nations, *Security Council, 61st Year: 5519th Meeting, Thursday 31 August 2006*, (UN Doc. S/PV.5519 (2006), 31 August 2006), pp.5,8-9.

⁴¹ The most recent UNSC resolution extended the UNMIS mandate until 31 October 2007 as it continues to work in south Sudan and waits for its transition in the Darfur region. See United Nations, *Security Council 1755 (2007)*, (UN Doc. S/RES/1755 (2007), 30 April 2007), p.3, para.1.

⁴² International Criminal Court: Office of the Prosecutor. 'Statement of the Prosecutor of the International Criminal Court, Mr. Luis Moreno-Ocampo, to the UN Security Council Pursuant to UNSCR 1593 (2005)'. 14 December 2006. http://www.icc-cpi.int/library/organs/otp/LMO_20061214_en.pdf (31 January 2007).

⁴³ United Nations, *Resolution 1593 (2005)*. (UN Doc. S/RES/1593 (2005), 31 March 2005).

found that in the Special Courts of the Sudan there have been six cases so far with less than 30 suspects. Eighteen of those have been low ranking military officers and the rest have been civilians.⁴⁴ Its national judicial investigation committee has not completed any investigations or prosecutions and its Special Prosecutions Committee, although it is currently investigating one incident for crimes against humanity and war crimes, it has also acquitted many individuals charged with war crimes.⁴⁵ The GOS provided a report in November 2006 of reported prosecutions of cases that involved the police forces and regular armed forces. There are indications that fourteen individuals have been arrested for violations of international humanitarian law and human rights abuses. The end result of the ICC's mandate from the UNSC is to ensure genuine justice from either national, international, or a combination.⁴⁶

Recently, on 27 February 2007, the prosecutor finished its investigations.⁴⁷

Following this, on 27 April 2007 the ICC issued its first warrant of arrests for individuals involved in the Darfur conflict, these were: Ahmad Muhammad Harun (Ahmad Harun), and Ali Muhammad Al Abd-Al-Rahman (Ali Kushayb).⁴⁸ Both

⁴⁴ International Criminal Court: Office of the Prosecutor, 'Statement of the Prosecutor of the International Criminal Court, Mr. Luis Moreno-Ocampo, to the UN Security Council Pursuant to UNSCR 1593 (2005)'. *Op cit*, p.3.

⁴⁵ Ibid.

⁴⁶ International Criminal Court: Office of the Prosecutor. 14 December 2006. Fourth Report of the Prosecutor of the International Criminal Court, Mr. Luis Moreno Ocampo, to the UN Security Council Pursuant to UNSCR 1593 (2005). http://www.icc-cpi.int/library/organs/otp/OTP_ReportUNSC4-Darfur_English.pdf 22 February 2007., p.10

⁴⁷ International Criminal Court: Office of the Prosecutor, 'Situation in Darfur, the Sudan: Prosecutor's Application under Article 58(7). *Summary*', 27 February 2007, http://www.icc-cpi.int/library/organs/otp/ICC-OTP_Summary-Darfur-20070227_en.pdf (15 March 2007).

⁴⁸ International Criminal Court, 'Pre-Trial Chamber I: Situation in Darfur, Sudan. In the Case of the Prosecutor v. Ahmad Muhammad Haran ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb")': Public Doc. Warrant of Arrest for Ahmad Harun' 27 April 2007, http://www.icc-cpi.int/library/cases/ICC-02-05-01-07-2_English.pdf (15 May 2007), and 'International Criminal Court, 'Pre-Trial Chamber I: Situation in Darfur, Sudan. In the Case of the Prosecutor v. Ahmad

have been accused of Crimes Against Humanity and War Crimes. Ahmad Harun was the former Minister of State for the Interior of the Government of Sudan, and currently holds the position of Minister of State for Humanitarian Affairs. Ali Kushayb is a leader of the Janjaweed.⁴⁹

As the genocide continues, more people are systematically killed, raped, forced to flee their homes, or die from starvation and disease because of their ethnicity. As former Secretary General Kofi Annan stated in one of his final speeches:

‘There is more than enough blame to go around [concerning Darfur] ... It can be shared among those who value abstract notions of sovereignty more than the lives of real families, those whose reflex of solidarity puts them on the side of governments and not of peoples, and those who fear that action to stop the slaughter would jeopardize their commercial interests.’

Further, he said of countries in the global south that they too ought to be blamed for ‘caricaturing responsibility to protect as a conspiracy by imperialist powers to take back the hard-won national sovereignty of formerly colonized peoples’. He stated that this was “utterly false”.⁵⁰

Muhammad Haran (“Ahmad Harun”) and Ali Muhammad Al Abd-Al-Rahman (“Ali Kushayb”): Public Doc. Warrant of Arrest for Ali Kushayb’, 27 April 2007, http://www.icc-cpi.int/library/cases/ICC-02-05-01-07-3_English.pdf (15 May 2007).

⁴⁹ Ibid.

⁵⁰ Human Rights Watch. Human Rights News. ‘Annan Blasts Global Failure on Darfur Horror: States Must Respect Rights in 'War on Terror'. (New York, December 8, 2006). <http://hrw.org/english/docs/2006/12/07/global14793.htm> 22 February 2007.

President al-Bashir who has been allowed to keep his position has played the UN well, appeasing all sides of the debate. Throughout the four years, he and his government have disagreed to defining the conflict as genocide, sided with Russia and China that Darfur was best dealt with by Africans who better understood the situation, also agreeing with them that UNSC resolutions would only give the rebels the upper-hand and worsen the situation, then thanked the US and Britain for their efforts in the Darfur Peace Agreement. They have also claimed, on numerous occasions, that they have a great track record of cooperation with the UN and other organisations. However, their cooperation has been half-hearted to say the least. Four years of conflict is the proof of that. Four years of the UN, humanitarian organisations, and others being denied access or given restricted access to Darfur, is testament to that. The GOS is still considering giving access to 3,000 UN peacekeepers to support the AMIS mission.⁵¹ For four years the Sudan's sovereignty remains, despite committing the international crime of genocide.

As all the previous genocides have shown, gaining military victory over its perpetrators seems the only way to stop genocide. In Armenia, Turkey was defeated by the great powers; the holocaust came to an end as the Allied Powers claimed victory; Pol Pot's 'killing fields' were ended by the invasion of Vietnam; the RPF seized control over the majority of Rwanda; and in the former Yugoslavia, in Bosnia and Kosovo, air attacks by NATO ended both genocides. Each case also showed that once genocide has begun the time for talks and negotiating are over, as the

⁵¹ United Nations, 'Sudan: Talks Continue On UN-African Force as More Killings Reported in Darfur', *UN News Centre*, 18 February 2007, in <http://www.un.org/apps/news/story.asp?NewsID=21637&Cr=sudan&Cr1=> (21 February 2007).

perpetrators are set on their goal to exterminate, in whole or in part, a group of national, ethnical, racial, or religious group.

The fact that the UNSC has allowed the genocide to continue for as long as it has, committing itself to negotiations, and not taking decisive action until the GOS agrees to it, clearly shows the flaws of the UNSC. When the Darfur Peace Agreement was signed, the US Secretary of State, Condoleezza Rice, suggested a NATO force to assist with the UN mission.⁵² And the US has since suggested of further, stronger action if the Darfur genocide continues. But the US, and NATO needs to tread carefully to avoid further retribution since the Kosovo conflict. So until Russia and China are willing to agree to more than just soft political resolutions, obtaining an adequate mandate to stop the genocide now, even by using force, and even without the GOS agreement, seems futile. Again, if there were no vetoes for cases of genocide history might not have cared for Russia and China's limited cooperation to stop the Darfur genocide.

So as the Darfur genocide continues, the world learns the pain of the veto. The Sudan has a long history of conflict since its independence. Just as the north-south conflict was coming to a close, the genocide of Darfur was just beginning. The problems in Darfur stemmed from the GOS neglect of the region. Rebel groups sought violent means to bring those issues to the attention of the GOS. The retribution by the GOS has been lethal. For four years the people of Darfur have been systematically killed, raped, forced to flee their homes and more, by the

⁵² United Nations. *Security Council 61st Year: 5434th Meeting, Tuesday 9th May 2006, New York* (UN Doc. S/PV.5434, 9 May 2006), p.6.

Janjaweed and the Sudan's armed forces. The state has been in denial of the crime of genocide. They have made it difficult for the UN and other international organisations to help the people in need, and stop the genocide. But the UNSC has the ultimate responsibility for peace and security in this world. Because of the reluctant states, Russia and China, the UNSC response thus far has been weak. Evidently, that power that they each hold – the veto – is partially responsible for the continuing genocide in Darfur.

Chapter Twelve: **Conclusion**

The 1948 Genocide Convention has laid relatively idle since its inception into international law. This has not been because of the lack of cases of genocide, but rather from the reluctance to of the international community to involve itself in preventing and punishing genocide. As this section has clearly shown, genocide has unfortunately only continued since the Convention. As primarily responsible for matters of international peace and security, the UNSC carries the blame in behalf of the international community. This section has discussed four genocides and the reactions by the UNSC.

First, the Cambodian genocide in the late 1970s was the first genocide after the establishment of the Genocide Convention. Surprisingly, it had little impact in international affairs and was almost forgotten about. In effect, the Cold War which divided the world into a bi-polar system was a significant factor in this. As discussed, the Soviets and the US were at odds with each other. Both states had been present in the Indochina region prior to Democratic Kampuchea, fighting for political dominance in Vietnam. By the end, the US was by popular opinion through with intervening in the region. The USSR which had led the communist ideology was also unable to involve itself in condemning the genocide as the Khmer Rouge espoused communism. China was the last major party to be involved in the region at

that time. The Khmer Rouge used China's model of communism as its exemplar. And as China was trying to establish itself as a vying communist power to the USSR, going against Cambodia was not in its interest.

In 1994 Rwanda was tormented by a horrific and speedy genocide. But preceding the Rwandan genocide the UN had been involved in some failing peacekeeping operations, most notably Somalia and the then continuing former Yugoslavia conflict. The US in particular was reluctant to get involved to face another "Mogadishu line". In Rwanda's hour of need, the UNSC reduced its troops on the basis that Rwanda had not been compliant enough with the UN's help. This action only helped to serve the perpetrators of the crime. The slow response of the UNSC left the RPF to forcibly stop the genocide itself,

The former Yugoslavia where there were two genocides in the 1990s showed the weakness of the UNSC and its inability to gain a timely, unanimous, strong motion to adequately prevent, stop, and punish genocide. Initially the EC was tasked with solving the conflict, but it was too great for them alone. Reluctantly the UNSC became involved. The US was hesitant at first, but it was Russia and China that were to be the hardest to appease.

In both Bosnia and Kosovo, Russia and China expressed their dislike to the use of force, China in particular who often found it hard to accept resolutions which referred to Chapter VII of the UN Charter. Both countries favoured political solutions in the strictest sense. Further, in the case of Kosovo, they both felt that it was an internal matter outside the jurisdiction of the UNSC. Although they both

reluctantly agreed to the initial air strikes by NATO in the Bosnian conflict, they strictly opposed further military action by NATO, and called the NATO air strikes during Kosovo a violation of international law. Quite simply they favoured sovereignty over human rights, even that of genocide.

Finally, Darfur, Sudan, has been inflicted by genocide since 2003. It came at the conclusion of the long Sudan civil war. Like Rwanda it began with rebel groups trying to gain equality for the Darfur region. However, the retribution has been and continues to constitute genocide. Official reports have shown that there is complicity between the government forces and the militias. Killings, rape, destruction of villages and so forth have been systematic and widespread, and the target has been civilians. The Darfur crisis has had a huge spill over into neighbouring states worsening the security of the region. Again the UNSC response has been slow and largely ineffective. China and Russia continue to favour sovereignty and endless diplomacy. One year on, UNMIS continues to wait to takeover from AMIS as the GOS continues to delay its approval UN peacekeepers in Darfur, and Russia and China refuse the UNSC from action without the GOS approval.

The common denominator in preventing and punishing genocide is the views, opinions, and national interests of the permanent members of the UNSC. These States hold the key in preventing genocide. As the UNSC has been assigned the task and responsibility of ensuring international peace and security, including genocide as a threat to international peace and security, then the UNSC has to act within that responsibility to prevent genocide. But as the permanent members opinions and

views can interfere with that responsibility it then becomes imperative that something changes to ensure future prevention of genocide.

Thus in order to unlock the chains that lock the UNSC from preventing genocide, and subsequently saving thousands and millions of lives, the power from the few has to be laid aside in times of genocide. The power of veto must not be allowed in times of genocide. And although vetoes have rarely been used in cases of genocide, the power that each of the permanent members hold goes against the need of preventing genocide. By the very opinions of the permanent members, resolutions are created in order to appease these members, in view of having them voted for or at least not to be vetoed against. Again, the right of veto must be withdrawn from the UNSC permanent members in time of genocide. This will enable the Genocide Convention to be used in a timely manner for its intended purposes. It will also ensure the security of numberless human lives that might otherwise be afflicted by genocide.

Part Three: Changing for a Better Future

Chapter Thirteen: **Introduction**

Thus far, this thesis has shown the history of the international community's will to prevent and punish genocide by creating the Genocide Convention to criminalise it. Accordingly, any attempt to create another holocaust is to be prevented and punished. Contrary to this, however, numerous genocides have occurred since the Convention.¹ Of the numerous genocides that have occurred, only a handful has been internationally recognised as such. And for the few which have been widely recognised as genocide, the Convention failed to make the mark intended on preventing and stopping the genocides until it has become too late.

Although the Convention is international law, the principle of non-intervention still remains in force. The decisions of the UN, in particular the UNSC, legally stand in-between withholding the principle of non-intervention and fulfilling the obligations of the Convention. As the cases of genocide in this thesis have shown, overriding the principle of non-intervention is a task that the UN enacts so reluctantly. Thus that ultimate tool, the veto, needs to be changed in cases of genocide. Part III looks at how and why the veto power was instituted into the UNSC and the debate over it. In particular, this section examines the veto power discussions in terms of genocide

¹ The 1985 Whitaker Genocide study includes: the German massacre of the Hereros (1904), Ukrainian Pogroms of Jews (1919), Tutsi massacre of Hutu in Burundi (1965, 1972), Paraguayan massacres of Ache Indians (prior to 1974), Iranian killings in Baha'is. See United Nations, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide Prepared By Mr. B. Whitaker*, (UN Doc. E/CN.4/Sub.2/1985/6, 2 July 1985), p.7, para. 22.

prevention and punishment. Finally this section concludes that the power of veto needs to be barred in cases of genocide. It does not seek to discuss a permanent end to the veto in general; rather it focuses solely on changing the power of veto for the particular case of genocide.

Chapter Fourteen: **Veto History**

The UN was established at the conclusion of WWII mirroring the world views and structure at that time. In less than half a century the world had been involved in two horrible and indescribable great wars. Tens of millions died and millions more were physically or mentally affected; cities, towns, and villages were destroyed. After WWI the people of the world placed their faith in the League of Nations to avoid another world war. But twenty years on the world was again embroiled in a bitter war. The League of Nations had failed. Despite this, the Allies sought to re-establish another intergovernmental organisation ‘to save succeeding generations from the scourge of war’.¹ This chapter deals with the origins of the veto, discussing the formation of the UNSC, and the logic of giving each permanent member exclusive veto rights.

The structure of the UN, though modelled after its forerunner – the League of Nations, was modified to avoid second failure. One of the weaknesses of the League was the rule of unanimity amongst all member states in the case of any intervention.² The UN was to avoid such a principle and instead allow veto power only to the permanent members of the UNSC. Since its inception it has been a matter of great

¹ United Nations, ‘Charter of the United Nations’. 26 June 1945. <http://www.un.org/aboutun/charter/> (5 March 2007), Preamble.

² The Avalon Project, ‘The Covenant of the League of Nations’. (1996). <http://www.yale.edu/lawweb/avalon/leagcov.htm> (8 March 2007), Article 5.

debate. Protests surrounding the veto were quelled by the permanent members' insistence of the veto or no UN.

On 30 October 1943, the Foreign Ministers of the USSR, US, and Britain, and the Chinese Ambassador, signed the Moscow Declaration which recognised the need of establishing 'a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security'.³ These same four states met in Dumbarton Oaks, in Washington D.C, and later in Yalta, in the Crimea, to plan the organisation structure. Finally in the famed San Francisco Conference, April 1945, member states to the United Nations Declaration⁴ convened for final discussions and to establish the United Nations. Compromises were made on all sides to get the UN established, with the veto being singled out as the make or break point of the UN.

The USSR, US, Britain, China, and France, were self-selected as the permanent five of the ultimate UN body, the UNSC. These five states held the economic and military power to establish themselves as such. Ten other states are selected every two years on a non-permanent basis. Under the Charter of the UN, the UNSC have the primary responsibility of international peace and security. Members of the UN conferred this responsibility upon the UNSC, 'in order to ensure prompt and

³ Moscow Declaration, Clause 4, as quoted in United Nations, *History of the Charter of the United Nations: Moscow and Tehran*. <http://www.un.org/aboutun/charter/history/moscowteheran.shtml> (Jan. 26, 2007). The UN also works to improve issues of human rights, international environment, health related issues such as AIDS, refugees, poverty, food, trafficking, terrorism, landmines, telecommunications, international travel, and so forth.

⁴ The United Nations Declaration, 1 January 1942, affirmed that the signatories would give their utmost support to the war effort, with the joint goal of peace.

effective action by the [UN]'.⁵ The UNSC was bound to '...act in accordance with the Purposes and Principles of the United Nations'.⁶

Under Chapter V, Article 27 of the Charter, every member of the UNSC has one vote. Decisions of the UNSC are divided between procedural matters and all other matters. The former needs only nine affirmative votes, whereas the latter not only requires nine affirmative votes, but the affirmative unity of the five permanent members. Hence, without directly using the term, the veto was established.⁷ Almost dividing the UN before it began, the Soviet Union had originally pushed to have a universal veto which included procedural matters. The other members disagreed with this stance opting for freedom of speech. It seemed unreasonable that the veto could bar important issues being discussed, effectively stopping the UNSC from accomplishing its role. Finally the USSR agreed to the more limited veto.⁸

Reasons behind the veto are varied. Firstly, it was to ensure that the Major Powers would cooperate not only in the present, but in the future. Without their position in the UNSC and their power to veto there was no guarantee that these states would retain the unity they then shared. The UNSC and veto was a preventative tool to future large-scale war between these states.⁹ This was presented to the smaller states as their essential safeguard.¹⁰ Also, these states argued that they deserved the veto because they were the main troop contributors for the UN. This was a protection to their national interests, ensuring that they did not get involved in any unwanted

⁵ United Nations, 'Charter of the United Nations', *op cit*, Chapter V, Article 24, para.1.

⁶ Ibid, para.2.

⁷ Ibid, Chapter V, Article 27, paras. 1-3. Any members who are party to a dispute are required to abstain from voting.

⁸ Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (United States of America: Westview Press, 2003), pp.202-220.

⁹ Anjali V. Patil, *The Veto: A Historical Necessity, 1946-2001* ([n.p.]: [n.pub.], 2001), pp.90-92.

¹⁰ Ibid, p.100.

conflicts.¹¹ Finally, the UK delegate at the San Francisco meeting offered the response to the ‘... criticisms on the ground of democracy and institutions’: ‘The delegates who will sit on the future Security Council representing the Permanent Members will, in fact, represent probably more than half the population of the world, and account has to be taken of that fact’.¹²

As the permanent members of the UNSC, the Major Powers ‘gained enormous power and responsibility’.¹³ Patil argues that the international community should be grateful for the permanent members bearing such a burden of responsibility.¹⁴ The smaller states that were involved in the founding discussions of the UN fought the veto till the very end. One of the strongest voices in the negating debate was the Australian delegate who argued that it wasn’t a veto of five, but a veto of one, meaning that only one member could dictate the decisions of the other five members. He continued by asserting that this disunity went against the UN aims.¹⁵ In the end, the five permanent members gave the smaller states an ultimatum: either accept the veto or lose their participation in the UN.¹⁶ Averse to destroying the UN before it even began, the veto was accepted by many of the smaller states.

Despite the permanent members’ assurance to the contrary, the veto has most certainly been used deceptively throughout its history. During the Cold War, the veto had the effect of ‘paralysing the Security Council’.¹⁷ Its dominance within

¹¹ Schlesinger, *op cit*, p.193.

¹² Patil, *op cit*, p.96.

¹³ Ibid, p.92.

¹⁴ Ibid, p.713.

¹⁵ Australian delegate, in *ibid*, p.100. (Un Doc. UNCIO, Document 956, III/I,p.6-7)

¹⁶ Schlesinger, *op cit*, p.223.

¹⁷ Ibid, p.284.

international affairs has continuously pushed the debate for UN reform.

Furthermore, there have been millions of lives affected by conflict in some way or another, who bear witness to the failings of the veto. But the veto does have its place. With the veto the Major Powers were able to join together in the greatest international security organisation thus far. In spite of its failings, the UN has also achieved much good in the world, protecting and caring for those who might not have been otherwise cared for. In truth, The UN was never intended to be a perfect body; but it can and must improve. The veto cannot and should not ever be used for those in the worst of circumstances, even genocide. The choice of veto over cases of genocide should never have been allowed. The permanent five have the opportunity now to rectify that.

The UN was created at the end of WWII with the aim of achieving future peace and security.¹⁸ The sensitivity of international relations required such an international organisation. Its fore runner, the League of Nations, had taught the establishing members of the UN that unanimity amongst all members was detrimental to the organisation. Thus it was decided by the five Major Powers that only they would have the power of veto. In that sense it would quickly and efficiently lead to the actions needed for international peace and security. The other member states abdicated this power and responsibility to the permanent five. Effectively, the five permanent members refused to participate in the UN if the veto was taken away from them. The arguments in favour of them having the right of veto are acceptable however, there is room for improvement. Changing the power of veto for cases of genocide must now be addressed.

¹⁸ United Nations, 'Charter of the United Nations', *op cit*, preamble.

Chapter Fifteen: **Discussion of the Veto's Reform**

The history of the veto has not been altogether favourable. Debate over the right of veto which began even before its inception has only continued through the years. Throughout the Cold War the veto was used as a tool of power politics, which paralysed much of the work of the UN. This only confirmed to the sceptics that the veto needed to be eliminated. But at the end of the Cold War there was renewed hope that the veto would be used wisely and in keeping with the aims of the UN. However, the veto remains problematic as Rwanda, Bosnia, Kosovo, and now Darfur testify. For the past decade the UN has been working towards reform, giving opportunity to change the veto. There have been different proposals relating to the changes within the UNSC and to the veto. This chapter considers the different proposals, with special focus on the arguments, given for changing the veto for genocide, war crimes, and other humanitarian and human rights abuses.

Supporters of the veto argue that for over sixty years now, the UNSC has maintained its responsibility of international peace and security. In that sense the veto need not be changed. They would even argue that problems concerning the veto have stemmed from smaller states' manipulation of the larger states.¹ But the incredible power of the veto, even without its actual physical use, has permitted cases of genocide, war crimes, and so forth to occur. Today the continuing genocide in the

¹ Anjali V. Patil, *The Veto: A Historical Necessity, 1946-2001* ([n.p.]: [n.pub.], 2001), p.709.

region of Darfur, in the Sudan, is testimony to the need to the change of power and right of veto. Formally it was the cases of Rwanda, Bosnia, and Kosovo that gave the foundation to the argument of excluding vetoing rights for genocide, war crimes, and others. This option seems the most realistic in the debate over UNSC veto power reform.

Since late 1996, the UN has been embarking on reforms to make it 'leaner, more efficient and more effective, more responsive to the wishes of its Members, and more realistic in its goals and commitments'.² This has included changes in leadership and management structure, budget and planning, staff selection and training, and reorganisation of offices. Although all the changes implemented will help to make the UN more effective and current to international relations now, UN reform would be incomplete without reform within the UNSC.

Under the Charter the UNGA has the authority to discuss questions 'relating to the functions and power of any organisation of the UN and to make recommendations'.³

In November 1993, the UNGA established the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters of the Security Council.⁴ One of the major topics that was and continues to be discussed is the membership of the permanent members. The membership of the five permanent members is viewed as outdated, as UN membership has quadrupled since its creation. Enlarging the number of the

² United Nations, 'Reference Reports and Materials: Reform at the United Nations. Chronology', 2006. <http://www.un.org/reform/chronology.shtml> (28 February 2007).

³ United Nations, 'Charter of the United Nations'. 26 June 1945. <http://www.un.org/aboutun/charter/> (5 March 2007), Chapter IV, Article 10.

⁴ United Nations, *Question of Equitable Representation on and Increase in the Membership of the Security Council: Draft Resolution* (UN Doc. A/48/L.28, 24 November 1993), p.2, para.1.

UNSC permanent members according to regional representation has been argued.⁵

States that have been mentioned as part of a new UNSC permanent membership include Brazil, Germany, Japan, and India.⁶ If the UNSC does enlarge, this could potentially complicate the power of veto.

Giving the veto power to any new permanent members seems most unlikely despite calls for greater equality. To ensure greater fairness in the decisions of the UNSC, there is one view that holds that there should be a specific number of positive votes in the UNSC that could overrule a veto. Or on the other hand, a two-thirds majority in the UNGA would also be able to overrule a veto. Another suggestion has been that if a veto is used then it would require an explanation.⁷ This would hopefully deter member states from using the veto. However, an explanation would only need to be used if a veto was actually used. Any threat of using a veto, which has huge consequences to even discussing certain situations and their remedies, would not require an explanation.

The most drastic of the veto proposals has been for its complete elimination. This, however, seems like an unrealistic possibility as any changes to the UNSC need to be approved by the UNSC itself.⁸ Therefore, any permanent member could veto such a drastic change. There is almost no doubt that the permanent members would

⁵ United Nations, *Report of the Open-Ended Working Group on Question of Equitable Representation on the Increase in the Membership of the Security Council and Other Matters Related to the Security Council* (UN Doc. A/60/47 (SUPP), 1 January 2006), Annex II, p.10, para.11.

⁶ United Nations, *General Assembly Official Records 60th Session: 48th Plenary Meeting, Thursday, 10 November 2005, New York* (UN Doc. A/68/PV.48, 1 January 2005), p.13, para.21.

⁷ United Nations, *Draft Report: Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council* (UN Doc. A/AC.247/2005/L.1, 1 August 2005), Annex II: The Question of the Use of Veto, pp.10, 13.

⁸ *Ibid*, p.10.

disapprove of completely abolishing the veto. Ironically, it is the veto which stands against changing the veto. The Non-Aligned Movement (NAM) has pushed for the gradual elimination of the veto.⁹ This has been a popular view of most member states of the UN. Gradual elimination proposals include only vetoing actions under Chapter VII of the UN Charter, or there should be regulations placed upon its use.¹⁰ It has also been argued that in cases of genocide or other humanitarian cases and human rights abuses, the veto should not be allowed.¹¹ Such arguments have come from many different members within the UN with the same view point that the veto should be disallowed in cases of genocide.

On 22 April 1999, British Prime Minister Tony Blair expressed his views on the matter in what has come to be known as the “Blair Doctrine”. His statement recognised the view that ‘...UNSC reforms need to reflect the propriety of intervention to stop genocide’. Furthermore he suggested that possible improvements included ‘...rethinking the veto enjoyed by the Council’s five permanent members’.¹² Such a view from one of the permanent members themselves gives hope of the possibility that such a change could be instituted within the UNSC.

⁹ United Nations, *General Assembly Official Records, 54th Session: 81st Plenary Meeting, Wednesday, 16 December 1999, New York* (UN Doc. A/54/PV.81, 16 December 1999), p.14.

¹⁰ United Nations, *Improving the Working Methods of the Security Council: Draft Resolution/ Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland* (UN Doc. A/60/L.49, 17 March 2006), Annex: Use of the Veto, p.4, para.13.

¹¹ *Ibid*, para.14.

¹² British Prime Minister Tony Blair as quoted in Michael J. Glennon, ‘Oblivious to Barbarism of the Most Horrific Sort’: The Charter Does it Fit?, *UN Chronicle*, Vol. 26, No. 2, 1999, in *United Nations Chronicle Online Edition* <http://www.un.org/Pubs/Chronicle/1999/issue2/0299p32p.htm> [accessed 28 February 2007].

Arguments that seek to get rid of the veto in its entirety, or change the membership and voting system of the UNSC, are at this stage idealistic. Hopefully the pursuit of changing just one aspect of the veto, and for the necessity of changing the veto for defenceless lives caught up in genocide which is the worst of all crimes, might prove successful. As argued within the UNGA, optimal positions for UNSC reform should be put away and replaced by realistic goals.¹³ Grand ideas of change are time consuming and could conceal and eventually eliminate discussion for reasonable 'stepping-stone' change.

For the prevention of genocide, the only necessary change in the power of veto is for it to cease as a right in times of genocide. For the UN to work better as a unit to maintain international peace and security there is a need for overall reform. Some suggestions have been given for the reformation of the UNSC, among them have been different proposals given for changing or eliminating the power of veto.

Membership in the UN has changed drastically with around four times the number of states than the UN's original membership. The veto power is inequitable against such a large membership. But nominating any drastic change to the veto, such as eliminating it entirely, is not realistic. However, preventing genocide does require some change with the veto. Therefore, it is not only necessary but reasonable to propose that the veto be restrained from use in times of genocide.

¹³ United Nations, *General Assembly Official Records, 50th Session: 59th Plenary Meeting, Tuesday, 14 November 1995* (UN Doc. A/50/PV.59, 14 November 1995), p.11.

Chapter Sixteen: **Preventing Genocide through Changing the Veto**

There are many different avenues for both stopping and preventing genocide.

Understanding the reasons and psyche of genocide is important in trying to prevent it in the future. But mediating misunderstandings between different groups of national, ethnic, racial, and religious backgrounds does not always prevent it. Genocide is an unfortunate reality. The Genocide Convention alone is not going to stop genocide from occurring. The cases of genocide discussed in this thesis testify of that. But the Convention is the mechanism whereby the international community can stop genocide.

For genocide to occur now, in the period whereby it has become an international crime, there needs to be a certain degree of reluctance by the international community to intervene. Prior to the Convention, genocide was ruled by the intent, numbers of the target group or groups, and the time they, the perpetrators had before there was strong enough resistance to stop it. But the international community was ruled by sovereignty and any outside attempts to stop genocide was considered illegal. Now, international law allows international intervention of other states to stop genocide, only if the UNSC authorises it. This of course is secondary to the state committing genocide which is required to prevent and punish the genocide first. Failing to do so allows the UNSC the justification to intervene.

Once the obligation for preventing and punishing genocide falls on the UNSC it becomes imperative that they undertake their obligations at a fast pace. The UNSC

is given the responsibility for international peace and security in behalf of all the member states of the UN. This was designed in order to provide necessary actions to maintain international peace and security at a quick and efficient level. Taking action against genocide should not, therefore, take months or even years to address, let alone prevent and eventually punish. First, there needs to be an independent process to determine if a case is genocide. Then decisive action needs to be taken from day one. The instant genocide begins, the time for negotiations ends.

As can be seen from the cases presented in this thesis, the veto can not only control whether the UNSC intervenes to prevent or punish genocide, but it also can stop other international actors from doing so as well. Genocide may well be an international crime, but as the case of Kosovo illustrates, a veto used or even threatened to be used by any permanent member of the UNSC to intervene, means that any actor that chooses to legitimately override the UNSC decision is in effect acting illegally. Hence one of the greatest crimes is allowed to occur, in a sense legally, because of the power of the veto. Therefore, the veto is clearly one of the greatest obstacles in preventing and stopping genocide.

There is an unquestionable need then to change the power of veto for the sake of preventing and stopping genocide. Of course, one would want to impede genocide at its origins, resolving the differences between groups before they affect the social, economic, and political lives of ordinary citizens. But for some communities, genocide is seen as the only desirable option. The international community is legally bound to stop genocide, but this obligation needs a stronger directive. Withholding the power of veto from cases of genocide would send a strong message to those who

would think of committing genocide: that the international community has no more legal restraints to prevent and punish genocide, thus guilty parties should expect the UNSC to stop genocide in a timely and efficient manner.

Once the right to the veto has been withheld in cases of genocide, it will then become imperative that the international community appropriately identify cases of genocide as genocide. The UNSC already has a good history of establishing independent inquiries that investigate cases of genocide. Or alternatively, the International Committee of the Red Cross (ICRC) could provide such investigations. The ICRC has the legal mandate from the international community, under the Geneva Conventions and the ICRC mandate which had quasi-legal status, to work as an impartial, neutral, independent, voluntary service ‘to undertake tasks incumbent upon it in Geneva Conventions to work for the faithful application of international humanitarian law applicable to armed conflicts and to take cognisance of any complaint based on alleged breaches of that law’, and ‘to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof’.¹ Also under its statute, ‘[t]he ICRC may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution’.² Hence, the ICRC already plays a significant role implementing and developing international humanitarian law, it would be appropriate that they could be considered as for the

¹ International Committee of the Red Cross, ‘Statutes of the International Committee of the Red Cross’, 2007, <http://icrc.org/web/eng/siteeng0.nsf/html/icr-statutes-080503> (9 March 2007), Article 4, para.1. (a),(c),(g).

² Ibid, Article 4, para.2.

role of determining cases of genocide. It would then be important for the UNSC to acknowledge such reports and take necessary action. The voting within the UNSC for action, without a veto, would then rely on an affirmative majority to proceed. Actions to prevent and punish genocide could therefore proceed without interference of power politics.

This chapter has discussed the reasons for selecting the change of veto rights and power as a means to stopping and preventing genocide. Understanding the reasons behind genocide continue to serve as a necessity in helping to prevent genocide long before it begins. However, once genocide has begun, and if it is clear that stopping it is beyond the given state, then it becomes the duty of the UNSC to intervene. But as history has shown, the veto stands in the way of the UNSC adequately fulfilling its task. Thus it is the veto that needs to be changed in order to prevent and stop genocide. The only change that is necessary for the veto to do this is to withhold the veto in cases of genocide.

Chapter Seventeen: **Conclusion**

This section has discussed the debate concerning the veto. Debate over the power and right of the veto has been around since it was first integrated as a tool for the exclusive rights of the permanent members. Smaller states at the founding meetings of the UN fought tirelessly against the veto. The five Major Powers desired the veto as security for their national interests and for security against each other. It was and continues to be a great responsibility to ensure international peace and security.

These points were stressed at the founding meetings as the five Major Powers tried to convince the smaller states that it was in their best security interests that the five permanent members of the UNSC should hold such power. Plus, it was a better option than the former League of Nations veto power which was given to all member states. After much contention over the veto, the Major Powers were to insist that it was either the veto or their withdrawal from inclusion in the UN. Thus the veto was accepted as an exclusive right of the five UNSC permanent members.

But the veto was to cause problems during the Cold War. Under the new world order at the end of the Cold War, there were expectations that the power politics of the veto would come to an end. But it was in the very cases of genocide, in Rwanda, Bosnia, and Kosovo, that highlighted that the UNs much-needed reform. The reform was widespread, but it would be incomplete without changes to the UNSC and the power and right to veto. There have been different proposals put forth to changing the veto. However, thoughts of eliminating the veto any time soon are too idealistic. In order to prevent and stop genocide there need only be a restraining of the use of

the veto in times of genocide and other war crimes. Focusing in on one reasonable and necessary change to the veto takes into consideration the need for this particular change to occur as soon as possible. Other more debatable changes will undoubtedly be time consuming and could end up being unsuccessful.

Conclusion: 'Never Again'

After the tragic holocaust, the international community in disgust said 'never again'. Unfortunately, over time that same urgent feeling to prevent and punish genocide has withered away. Worst still, genocides that have occurred since the Genocide Convention's creation in 1948, have been given free rein by the threat or the actual use of the veto. This thesis has discussed future international prevention of genocide through changing the power of veto.

Genocide is considered the 'crime of all crimes', owing to the fact that people are intentionally targeted for elimination based on their national, ethnic, racial, or religious grouping. It is a crime that has been committed throughout history; and modern technology has significantly increased the gravity of genocide. The case of the Armenian genocide in Turkey during WWI was the first known genocide that brought together international condemnation and an attempt by outside states to prosecute those responsible for the crime. Despite its failings it set a precedent for future international punishment.

Arguably the greatest genocide of our time was the holocaust during WWII. The Nazi's systematically and methodically killed numerous 'inferior' groups – the gypsies, Poles, Slavs, Russians, the physically and mentally disabled, and most of all, six million Jews. At the end of WWII the victors of war sought for the punishment of the perpetrators of the genocide. Thus the international community set up the Nuremburg Tribunal. None of the perpetrators could be tried for genocide

because at the time that they committed the offences it was immoral but not illegal. So they were tried for war crimes and crimes against humanity.

In 1948 the Genocide Convention was established which would finally include genocide as an international crime. The Convention is limited in its definition of genocide, but it provides the legal mechanism for preventing and punishing it. First and foremost, a state committing genocide is required to prevent and punish genocide. That failing, it then becomes the task of the UNSC, who is responsible for international peace and security.

From April 1975 to January 1979, the people of Cambodia came under attack of a vicious new social structure that required a pure, undefiled, Khmer nation in the new communist state. Under the leadership of Pol Pot, foreigners were forced to leave, leaving behind the truth of the new regime. An estimated 1.5 million died in the genocide that targeted several ethnic, religious, and even national groups. The regime continued with little acknowledgement from the international community. The Cold War was in its prime with the Vietnam War just ending. The US public wanted out of the Indochina region; China remained supportive of the Khmer Rouge. These two states alone threatened any intervention to stop the genocide. But the Soviets also had a political interest to initially stand by the Khmer Rouge. The veto was never used, but had the UNSC discussed the possibility of intervening, it is more than likely that it would have been used.

In 1994 the world stood by again as another genocide occurred, this time in Rwanda. It took only 100 days for 800,000 Tutsi and moderate Hutu to be slaughtered in the

ruthless bloodbath perpetrated by Hutu government officials, the armed forces, militia, the media, and countless civilians. The UN had been involved in Rwanda prior to the genocide, but to save peacekeeping from another 'Mogadishu' the states with peacekeeping troops were prepared to leave. The US actively supported such action desiring to drastically downsize the UN peacekeeping force. The right to veto which the US had, stopped the UNSC from addressing the genocide appropriately.

From 1991 to 1999, two genocides occurred in the Balkans. First in Bosnia, which lasted until 1995, and then again from 1998 to 1999 in Kosovo. In the former genocide, Bosnian Serbs and Croatians perpetrated genocide against Bosnian Muslims. The Serbs were most responsible for the crimes committed. Again, in the latter genocide, it was the Serbs who were responsible for the genocide against Kosovo Albanians. Although there was some reluctance by the US initially to be completely involved in stopping the Bosnian genocide, it was Russia and China who stalled the process. Again, their unfavourable position to military intervention meant that NATO was forced to stop the genocide without a mandate by the UNSC; consequently their invasion was illegal. This action bypassed any threat or use of the veto which had prolonged the Bosnian genocide.

The final genocide is most important to any current arguments to change the veto to help prevent and punish genocide. Currently in Darfur, Sudan, there are clear links between the Sudan's armed forces and militias both seeking to eliminate the 'inferior' African Muslims. This genocide has been going on for the last four years. An increasing number of organisations and states have called it genocide, most notably the US. But Russia and China are reluctant to follow suit. Hence, without a

name there is no imperative to stop the carnage. They have been supportive of allowing the GOS to prove itself and therefore are reluctant to support even soft resolutions. But four years is too long. Thus we see that the power politics of the veto, in cases of genocide, must come to an end.

Finally the veto, which has been debated over since its inception, has been under review along with other UN reforms. But UN reforms would not be complete without a change in the right and power of veto. The cases of genocide discussed in this thesis clearly show the negative impact that the veto has had in preventing and punishing genocide. Amongst several proposals for changes to the veto, one stands out as being the most reasonable and realistic. It also happens to be the required change needed for faster genocide prevention and punishment. The proposal is to withhold veto rights from cases of genocide and other related crimes.

This thesis has argued that one major aspect of preventing, stopping, and punishing genocide is to change the veto power of the five permanent members of the UNSC so that they are unable to use it in cases of genocide. It has shown that interests of even one of these five states can prevent or prolong the ‘crime of all crimes’ being committed. This reform of the right and power of the veto is necessary to prevent delays in appropriate action to halt genocide. It is necessary in keeping the Genocide Convention relevant. It is necessary in saving lives, as the imperative of saving lives stands supreme.

Annex

Convention on the Prevention and Punishment of the Crime of Genocide

Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948

Entry into force: 12 January 1951, in accordance with article XIII

The Contracting Parties ,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided :

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to

all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

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